

March 4, 2013

SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL LEGAL COUNSEL TOLL AND NON-TOLL COLLECTION AND RELATED SERVICES ON AN “AS NEEDED” BASIS

Dear Sir/Madam:

The Port Authority of New York and New Jersey (hereinafter referred to as “Port Authority”) and the Triborough Bridge and Tunnel Authority (TBTA), (collectively “the Authorities”), thank you for your interest in responding to the subject Request For Proposals (RFP) for performance of expert professional legal counsel toll and non-toll collection and related services, including Non-toll Violation Matters, as indicated in Attachment A, hereto, on an “as needed” basis during 2013 with two, one year options (2014 and 2015) to renew at the Authorities’ discretion.

Each Authority expects to award its own separate agreement(s) with selected proposers. There is no guarantee that each selected proposer will be awarded agreements with each Authority. There is no guarantee of work to be requested thereunder. Responders to this RFP may propose to perform the contemplated services to both Authorities or only one, as indicated herein.

Attached hereto is a copy of each Authority’s Retainer Agreement (Exhibit “A” (Port Authority) and Exhibit “B” (TBTA)) including Attachment “A” thereto, which should be carefully reviewed by you as it is the form of the Agreement that each Authority intends that you sign in the event of acceptance of your Proposal. These agreements form the basis for the submission of proposals, therefore, you should not make any changes thereto, nor restate any of the stipulated provisions in your Proposal or supporting material. The scope of the tasks to be performed by you are set forth in Attachment “A”, attached hereto and made a part hereof.

This RFP and the information contained herein, as well as any additional information that may be provided to your firm by the Authorities as part of the RFP process or through subsequent or related discussions, is considered confidential and proprietary to the Authorities. It is provided to your firm for the sole purpose of enabling it to respond to this RFP, and is to be kept in confidence in accordance with the terms and conditions of the Proposer’s Agreement between your firm and the Port Authority (Attachment “B”) included herewith and made a part hereof.

I. PROPOSER REQUIREMENTS:

Proposals will only be considered from firms that can demonstrate the following:

- A. Successful firm experience in commercial litigation for at least three consecutive years immediately prior to the submission of proposals, with an emphasis on collection cases (collecting on outstanding amounts);
- B. Proposed staff, as appropriate, must have been admitted to practice law in the State of New York and/or New Jersey, be in good standing, and have at least three years experience in litigation collection cases in the courts of the State of New York and/or New Jersey;

- C. Performed a conflict of interest check and certified that there does not exist any potential/actual conflict of interest with any current or reasonably foreseeable future client.
- D. Have in place proper computer software and expertise to generate reports such as those required herein and proper internal computer and manual safeguards to protect the confidentiality of the information that the Authorities will be providing to the law firm.

II. PROPOSAL FORMAT REQUIREMENTS

To respond to this Request for Proposals, the Proposer shall submit a concise proposal in response to the following basic criteria:

- A. To be acceptable, this Proposal shall be no more than 30 pages (single-sided using 12 point or greater font size) not including resumes, or Section III, items A, B, C, H, and I below. Each resume shall be 2-page maximum, single-sided using 12 point or greater font size. Product brochures and other sales literature will not be accepted as substitutes for written responses to this RFP. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Legal Firm Name” and the **RFP Number 29853** clearly indicated on the cover.
- B. Each section of the proposal shall be separated with a tab divider that is labeled in accordance with the requirements specified below.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address Proposal to: The Port Authority of New York and New Jersey, 2 Montgomery Street, Jersey City, New Jersey 07302, Attention: RFP Custodian. You are requested to submit one (1) reproducible original and seven (7) copies, along with eight (8) compact disc copies, of your Proposal for review. Notwithstanding retention of the compact disc, in case of conflict, the reproducible original of the proposals and the written hard copy Agreement, if awarded, shall take precedence over material on the compact disc.
- D. In each submission to the Port Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract awards and contract payments, which shall be the responsibility of the proposer. Provide the name, telephone, and email address of the person who shall be the contact for this RFP, as well as an address to which any written correspondence is to be sent.
- E. Your Proposal should be received in sufficient time so that the Port Authority receives them **no later than 2:00 p.m. on March 26, 2013**. The cover of your submittal must include the RFP Number (as stated above) and the RFP title. The Port Authority assumes no responsibility for delays caused by any delivery services.
- F. If your proposal is to be hand-delivered, please note that only individuals with proper identification (e.g., photo identification) will be permitted access to the Port Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted. The Port Authority assumes no responsibility for delays caused by any delivery services.

III. SUBMISSION REQUIREMENTS

To respond to this Request for Proposals, submit the following information:

Section A. Agreement on Terms of Discussion

In accordance with the Port Authority's policy, in the front of your Proposal, a copy of Attachment "B" (Agreement on Terms of Discussion), signed by a senior partner of your law firm.

Section B. Transmittal Letter

Submit a letter, on letterhead, signed by an authorized representative of your firm, demonstrating compliance with each of the aforementioned "Proposer Requirements" listed above. Your transmittal letter shall also include the following:

1. Joint Venture Information

A. A statement indicating whether the Counsel is proposing as a single entity or a joint venture. If a joint venture, submit all information required for a single entity for each participant in the joint venture. If the Proposer is a legal entity joint venture and seeks to propose as such, the Proposer must meet the prerequisites. All the qualification information required for a single entity shall be submitted for *each* participant in the joint venture. If a common law joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally, and each participant shall execute the Proposal. If a joint venture is deemed qualified to receive an invitation to deliver a formal presentation of how they propose to perform the services outlined herein, the joint venture shall be composed of the same participants as were in the joint venture when they submitted the Proposal. No substitution of participants will be allowed without the express prior written permission of the Port Authority.

B. Submit a copy of any written agreement, or understanding, which exists between each party to the joint venture as part of the Proposal. If no written agreement or understanding exists, the Lead Proposer shall be identified and the joint venture shall include in its Proposal a written statement explaining how the joint venture will fulfill the requirements of the Retainer Agreement. Such explanation shall fully discuss and identify the responsibility of each party to the joint venture for performing the services, and for providing the required insurance.

2. Indicate whether you are proposing to perform the contemplated services for both Authorities, or only one, if one, specify.

Section C. Cost

With the exception of "on-site" services and direct costs specified in the law firm's proposal, pricing under this Retainer Agreement will be on a contingency fee basis. The contingency fee shall be calculated based upon the Total Amount(s) actually collected (tolls and fees including but not limited to E-ZPass Violation Administrative Fees). Contingency fees shall be collected from those who failed to pay the required toll(s) because their E-ZPass account is delinquent, or because they used vehicular crossing(s) without paying the required toll(s) (collectively referred to as "toll violators"). Contingency fees do not include out-of-pocket expenses, such as court costs, and disbursements, and shall constitute payment for all other

costs incurred by the law firm in collecting monies due. For TBTA, contingency fees shall be calculated based upon the Total Amount(s) actually collected from individuals and firms with payments due to TBTA including but not limited to vendors and current and former TBTA employees.

Should you choose to propose a different method for calculating the contingency fee, please explain in detail the proposed methodology and your reason therefor. Court costs if any, should not be included as part of the contingency fee and will be reimbursed to the firm as provided in the Agreement provisions which refer to “out-of pocket” expenses.

Provide the following information:

1. An estimated cost and staffing analysis for performance of On-Site Services listed in Attachment “A”. The staffing analysis should give a detailed breakdown which identifies assigned staff, staff position title, hours of work per person/per task, and actual hourly pay rate, and hourly billing rate for each person.
2. A description of all services included in the contingency pricing,
3. The contingency rate as a percentage of the Total Amount Collected,
4. Describe all direct costs, which shall be deducted from the amounts actually collected
5. An itemized estimate of out-of-pocket expenses

Section D. Firm Qualifications and Experience

1. General Information:

- a. List the firm’s offices and the number of partners, of counsel, associates, paralegals, and non-attorneys by location.
- b. If your firm is currently doing business, or has within the past 3 years done business, with the Port Authority or the TBTA, describe the services provides/provided.
- c. As a law firm, certify that a *conflicts search* has been performed, and that any actual or potential conflict of interest in regard to having either Authority as a client, with respect to collection litigation, exists. Identify whether your firm (or any of your partners or associates) are, or have been, defendants or respondents in any litigation or agency action (e.g., disciplinary proceeding) relating to the provision of legal services, including malpractice claims.

2. Firm Capabilities and Staffing

Describe your firm experience with collection litigation generally. Specifically, provide your firm expertise in handling and pursuing outstanding amounts owed to clients and your firm’s trial experience in the State Courts in New York and/or New Jersey. Describe your representation of governmental entities or major corporations in collection litigation matters, creative and strategic approaches, counseling expertise, and cost effectiveness.

3. Diversity Representation

Provide statistics on the number and percentage of law firm minority and women personnel within each category (partner, associate, and paralegal) and the degree to which the firm has partnered with minority or women owned firms in the past (including as a

part of the ABA minority counsel program), as well as your commitment to do so in the future.

4. Client References

Provide references (include contact information) who may be contacted to confirm your firm's prior experience. We will not contact any reference without first reaching out to advise you of such.

Section E. Staff's Qualifications and Experience

Introduce key personnel, attorneys and paralegals, responsible for implementing the scope of work described in Attachment "A". Demonstrate their experience as required to perform the contemplated tasks and successfully represent the Authorities in litigation by highlighting their experience, including but not limited to:

1. Proposed Assigned Partner:

Provide a profile demonstrating the experience needed to supervise and properly provide the services set forth in Attachment "A". Identify the types of litigation this attorney has managed in the past year. Clearly state how this Partner intends to supervise the work on this project while also currently managing other work. Include a percentage of time the Assigned Partner would dedicate to this Agreement as well as others. Provide a resume that details his/her educational background, chronological history of employment, and relevant licenses, and/or certifications.

2. Other Key Personnel Experience:

Detail the experience of the assigned attorneys that shall be responsible for the successful pursuit of toll violators; indicating their accomplishments in collection litigation, and in handling and pursuing outstanding amounts owed to clients. Attach a detailed resume for each individual that includes educational background, chronological history of employment, relevant licenses, and/or certifications. The resumes shall clearly identify the years of experience in the field related to the task that the individual will be responsible to perform.

3. Prepare an organizational chart that identifies the attorneys and paralegals assigned as well as their tasks, responsibilities, and reporting relationships.

Section F. Technical Approach

Your Technical Approach to performance of each task in Attachment A shall include, but not be limited to:

1. A detailed description of the proposed legal strategy that the firm plans to follow with respect to representing each Authority;
2. Describe the types of monthly/quarterly reports the firm will generate to track the current status of services performed.
3. A staffing analysis for each task identified in Attachment "A". The staffing analysis shall include a typical work-flow model(s) sequencing the tasks as anticipated, staff to be assigned to each task, and estimated hours to be expended by said staff in performance of each task. For all additional tasks, other than those identified in Attachment A, provide a description of the task, and an explanation why it is required, and associated staffing.

4. Identify the type of computer support system/programs used, including but not limited to those for document tracking, indexing, retrieval, and safeguarding, calendar/tickler system, cost tracking and controls, and other computer-based tools employed, and the benefits derived there from.

Section G. Management Approach

Describe in detail your proposed Management Approach, to include, but not be limited to:

1. Internal management hierarchy to efficiently and effectively represent each Authority in performance of the proposed services, including, tracking and controlling costs;
2. Procedures for keeping the Authorities informed of progress, and related issues, including scheduled trial and inquest dates;
3. A description of the quality control/quality assurance measures employed by your firm.

Section H. Affiliates

A complete list of your firm's affiliates.

Section I. Retainer Agreement

The Proposer is expected to agree with each Authority's form of the Retainer Agreement and their terms and conditions. The Proposer should therefore not make any changes in the Retainer Agreement(s) nor restate any provisions in your Proposal or supporting material. However, if the Proposer has any specific exception(s) or addition(s), such exception(s) or addition(s) should be set forth in a separate letter included with its response to the RFP. The Authorities are under no obligation to entertain or accept any such specific exception(s). No exception(s) will be considered if they are not set forth in the aforementioned separate letter unless they directly result from a change in the Scope of Work as mutually agreed to by the Proposer and the respective Authority.

IV. ORAL PRESENTATIONS

After review of all proposal submissions, an oral presentation to the selection committee may be requested. It should be noted that firms selected to make presentations may be given short advance notice. The presentation should be limited to 30 minutes, and include the materials contained in your proposal. The presentation will be followed by an approximately 30 minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than five (5) other senior staff members who are proposed to work on this project. Notification of presentation schedule is made via e-mail. **Provide the name and e-mail address of the person who should be contacted for presentation scheduling**, if applicable, as well as an alternate in the event that person is unavailable.

V. SELECTION PROCESS

The qualifications based selection shall take into consideration the technical qualifications presented below in order of importance, and subsequently cost, as appropriate. Qualifications and experience of the staff proposed to perform services hereunder:

- A. Qualifications and experience of the firm;

- B. Qualifications and experience of the staff;
- C. Technical approach for the performance of the contemplated services; and
- D. Management approach for the performance of the contemplated services.

After consideration of these factors, each Authority may enter into negotiations with the firm (or firms) deemed best qualified in terms of the foregoing factors to perform the required services.

VI. ADDITIONAL INFORMATION

If your law firm is selected for performance of the subject services, it shall comply with all applicable laws, codes, rules and regulations including, but not limited to the Fair Debt Collection Practices and the Fair Credit Reporting Act.

- A. If your law firm is selected for performance of the subject services by the Port Authority, the agreement you will be asked to sign may include clauses entitled “Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification, Disclosure Of Other Information” and “Non-Collusive Proposing And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees.” By submitting a proposal, the law firm shall be deemed to have made the certifications contained therein unless said law firm submits a statement with its proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your proposal, clearly marked “CERTIFICATION STATEMENT.”
- B. If your law firm is selected for performance of the subject services by TBTA, the following will apply:
 1. Prospective Proposers are reminded to review and submit the TS-4, TS-4 Supplement and the TS-6 forms in this RFP.

In addition, Prospective Proposers shall identify all legal or administrative investigations, actions or proceedings in which the Prospective Proposer or any partner has been involved within the last five (5) years involving violations or alleged violations of the Fair Debt Collection Practices and the Fair Credit Reporting Act or any other federal, state or local law governing debt collection or legal practices. In each such case (i) provide contact information for each entity bringing the investigation, action or proceeding; (ii) describe the investigation, action or other proceeding and each outcome and provide supporting documentation. This information is subject to the continuing disclosure requirements set forth in the TBTA retainer agreement.

2. TS-4 Supplement (Lobby Law)

COMPLIANCE WITH NEW YORK STATE FINANCE LAW SECTIONS 139-j AND 139-k, Disclosure of Prior Non-Responsibility Determinations form and Bidder’s/Proposer’s Affirmation and Certification form

Instructions:

Disclosure of Prior Non-Responsibility Determinations and Bidder’s/Proposer’s Affirmation and Certification forms the Authority from awarding the contract to the proposer.

Metropolitan Transportation Authority Vendor Code of Ethics

Proposer's Certification of Compliance with the MTA Vendor Code of Ethics (the "Code"): All Vendors, as defined by the Code, involved in this Solicitation and during the performance of any resultant contract are subject to the Code, which is available for Proposer's immediate review on the MTA website at www.mta.info/mta/procurement/vendor-code.htm. Accordingly, all Proposers must certify compliance with the Code. The TS-4 Information to be furnished by each proposer includes the Certification of Compliance with the MTA Vendor Code of Ethics.

3. Iran Divestment Act 2012

This Agreement is subject to New York State Finance Law Section 165-a, Iran Divestment Act of 2012. Pursuant to Public Authorities Law §2879-c, the Proposer is required to complete Appendix F, Iran Divestment Act – Certification which shall be submitted with its proposal. Failure to complete and submit the certification form shall result in a determination of non-responsiveness and may disqualify the proposal, thereby precluding the Authority from awarding the contract to the proposer.

4. Point of Contact

The Point of Contact for this Request for Proposal (RFP) is the Principal Contract Specialist, Ms. Tracy Tiernan identified below. All issues regarding this solicitation shall be directed to the Point of Contact for this procurement, or other person(s) designated by the Authority as authorized to receive communications on behalf of the Point of Contact (Designated Point(s) of Contact). Contacts (e.g. phone calls, e-mails, meetings) seeking to influence the procurement to anyone other than the Principal Contract Specialist are prohibited.

After review of all proposals received, two (2) copies of the appropriate Retainer Agreement will be forwarded to the selected firm(s) who shall sign and return both copies. The return of one (1) copy executed by the individual Authorities will effectuate the Agreement.

Each Authority reserves the right to negotiate with one or more firms submitting proposals in response to this RFP, to award to one or more firms submitting proposals, or to reject any and all proposals as it may determine in its sole and absolute discretion.

Each Authority reserves the right to cancel the award of their respective Retainer Agreement at any time including before its execution, if they determine that such cancellation to be in their best interest. In no event will either Authority have any liability whatsoever for cancellation of an award prior to execution of their Retainer Agreement. Any firm submitting a proposal in response to this RFP assumes the sole risk and responsibility for its expenses prior to execution of a Retainer Agreement.

Proposers are advised that additional vendor information, including, but not limited to, forms, documents, and other related information, may be found on the Port Authority's website at <http://www.panynj.gov/business-opportunities/become-vendor.html>. Should you have any questions, please e-mail them to Ms. Tracy Tiernan, CPPB, Principal Contract Specialist, at ttiernan@panynj.gov. Neither Ms. Tiernan, nor any other employee of the Port Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such

writing shall form a part of this RFP, or the accompanying documents, as appropriate. There shall be no compensation for proposal preparation or presentation. No rights accrue to any Proposer except under duly authorized agreement for performance of the specific services.

Each Authority reserves the unqualified right, in their sole and absolute discretion, to reject all Proposals, to undertake discussions and modifications with one or more law firms, to waive defects in the Proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely yours,

Tim Volonakis
Assistant Director
Procurement Department

Attachments

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL LEGAL COUNSEL TOLL AND NON-TOLL COLLECTION AND RELATED SERVICES ON AN “AS NEEDED” BASIS

I. BACKGROUND

The Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey (the “Port Authority”) is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Port Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges.

The Port Authority operates the following bi-state crossings: George Washington Bridge, Lincoln Tunnel, Holland Tunnel, Goethals Bridge, Outerbridge Crossing, and Bayonne Bridge. Tolls are paid at the crossings via either cash or the E-ZPass electronic toll collection system. E-ZPass allows customers to pass through toll lanes at the Port Authority’s interstate vehicular crossings and certain other regional facilities without stopping to pay a toll collector or cashier. The toll lane equipment reads information from an E-ZPass transponder located on the windshield, license plate, or roof of a customer’s vehicle. The toll amount is then deducted from the customer’s prepaid account balance.

The absence of a valid E-ZPass transponder while using an E-ZPass equipped toll lane will result in a violation. An invalid transponder may be the result of a negative E-ZPass account balance or suspension of an account for excessive speeding in E-ZPass toll lanes, or an inoperative or incorrectly mounted or obscured device. A negative account balance occurs when an E-ZPass customer continues to use E-ZPass in spite of the insufficient funding of the customer’s account prepaid balance. During a violation, the image of the offending license plate is captured in the toll lane and used to identify the violator. If the license plate is identified as being assigned to a valid E-ZPass account, the E-ZPass account is charged the toll and no violation is issued.

For each violation transaction at Port Authority facilities, the Port Authority seeks the unpaid toll amount at the cash, undiscounted rate and a \$50 E-ZPass Violation Administrative Fee. Once the responsible party has been identified through Department of Motor Vehicle records, the E-ZPass Customer Service Center (hereinafter referred to as “CSC”) issues up to two Violations Notices on behalf of the Port Authority over a 60-day period. Failure to respond

to the CSC's requests for payment for the violations during the 60-day period automatically results in the matter being referred to the Port Authority's contracted collections agency to actively pursue the collection of the outstanding amounts owed to the Port Authority.

The amounts not collected through the above measures, are referred to Counsel for legal action. The State courts in New York and in New Jersey are the courts that have jurisdiction over such matters.

Existing Law Relative to Toll Evasion on Port Authority Facilities

Toll evasion on Port Authority facilities is subject to the laws of New York and New Jersey, which include but are not limited to:

- Section 6801 *et seq.* of McKinney's Unconsolidated Laws, Port Authority of New York & New Jersey
- N.J.S.A. 32:1-154.1 *et seq.*, Interstate and Port Authorities and Commissions, rules and regulations governing traffic on vehicular crossings operated by The Port Authority of New York & New Jersey vehicular crossings operated by The Port Authority of New York & New Jersey

The Triborough Bridge and Tunnel Authority

The Triborough Bridge and Tunnel Authority (TBTA), popularly known as "MTA Bridges and Tunnels," is the largest toll agency in the world, serving more than one million people daily in the New York metropolitan area. TBTA, an affiliate of the Metropolitan Transportation Authority (MTA), is a public benefit corporation, organized and existing under New York Public Authorities Law §§ 550, et seq. It is empowered to acquire, design, construct, maintain, operate, improve and reconstruct seven (7) toll bridges (Robert F. Kennedy, Throgs Neck, Bronx Whitestone, Verrazano-Narrows, Henry Hudson, Marine Parkway-Gil Hodges Memorial, and Cross Bay Veterans Memorial) and two (2) toll tunnels (Hugh L. Carey and Queens Midtown) that connect the five boroughs of New York City and provides surplus toll revenues to support the MTA's integrated mass transit and commuter rail network. On average, over 800,000 vehicles use TBTA facilities each day.

TBTA is seeking legal services that may pertain to, among other things, bringing legal actions against toll violators to collect unpaid tolls and fees. In addition, such legal services may include bringing legal actions against firms and individuals to collect amounts due to TBTA from firms and individuals including but not limited to vendors and current and former TBTA employees.

Toll Violation Matters

TBTA introduced its E-ZPass system of electronic toll collection at its facilities in 1995. The system uses a transponder tag, which transmits a uniquely coded signal to a reader in a toll lane. That information constitutes a transaction, which is electronically posted to the customer's E-ZPass toll account. TBTA collects tolls at eight of its nine facilities using gated E-ZPass lanes and cash lanes staffed by Bridge and Tunnel Officers.

The New York E-ZPass Customer Service Center (CSC) is operated by a contractor, Xerox State & Local Solutions, for participating agencies, which include TBTA, the Port Authority, and the New York State Thruway Authority (NYSTA), and through NYSTA, the New York State Bridge Authority (NYSBA) and the Peace Bridge Authority. The CSC

maintains over 2.3 million TBTA E-ZPass accounts that have over 3.9 million transponder tags in use.

Toll evasion on TBTA facilities is subject to the laws of the State of New York and TBTA regulations, which include, but are not limited to:

- New York Public Authorities Law §§552, 553
- New York Vehicle and Traffic Law §1630
- Title 21 New York Code of Rules and Regulations §§1020.7, 1021.3, 1023.7

There are four general categories of toll violation matters that shall be referred to Counsel for legal action, following unsuccessful pursuit by TBTA's collection agency.

Violations in the E-ZPass-only Lanes at the Henry Hudson Bridge. From January 2011 to November 10, 2012, TBTA operated gateless E-ZPass-only lanes at the Henry Hudson Bridge as the first phase of its All-Electronic Tolling (AET) pilot⁽¹⁾. Vehicles using gateless E-ZPass-only lanes without E-ZPass transponder tags incurred toll violations. TBTA matched license plate images with information from various state departments of motor vehicles (DMV) to send Notices of Violation to registered owners for payment of the unpaid tolls and the \$50 violation fee per unpaid toll imposed by TBTA regulation.

- (1) The AET program at the Henry Hudson Bridge is a pilot program and TBTA expressly reserves the right to discontinue the use of gateless, cashless and/or AET operations at the Henry Hudson Bridge at any time.

E-ZPass Violations at the Henry Hudson Bridge. Since January 2011, toll violations arise when an E-ZPass tag is used at the Henry Hudson Bridge without sufficient funds in the account. For New York E-ZPass Customer Service Center account holders, Notices of Violation are sent to the account holders for payment of the unpaid tolls and the \$50 violation fee per unpaid toll imposed by the New York E-ZPass customer agreement. For non-New York E-ZPass account holders, TBTA matches license plate images with DMV information to send Notices of Violation to registered owners for payment of the unpaid tolls and the \$50 violation fee per unpaid toll imposed by TBTA regulation.

Tolls by Mail Violations at the Henry Hudson Bridge. Since the inception of the AET phase of the pilot on November 10, 2012, TBTA has been matching license plate images of vehicles without E-ZPass tags with DMV information to send toll invoices to registered owners seeking to collect the unpaid toll. If the tolls remain unpaid 30 days after the second invoice, TBTA sends Notices of Violation to the owners for payment of the unpaid tolls and the \$50 violation fee per unpaid toll imposed by TBTA regulation.

Negative Balance E-ZPass Accounts. In the E-ZPass Customer Service Center Agreement ("E-ZPass Agreement"), E-ZPass customers have agreed to use TBTA's toll facilities only when they have sufficient funds in their E-ZPass account to pay any tolls and fees incurred. Some E-ZPass customers continue to use their transponder tags with insufficient funds and incur substantial negative account balances in violation of the E-ZPass Agreement. Violation fees are imposed against E-ZPass account holders under the E-ZPass Agreement, not the TBTA regulation (which imposes liability on registered owners).

In addition, TBTA is considering the use of gateless, cashless or AET operations to mitigate construction delays during upcoming toll plaza reconstruction projects at various TBTA facilities. In the event that TBTA were to undertake gateless, cashless or AET operations at

one or more facilities, either during construction or as a permanent method of toll operations, then toll violation volumes would increase, perhaps significantly.

TBTA makes no representation regarding the number or volume of toll violation matters that will be referred to Counsel for legal action. No claim can arise against TBTA for any change whatsoever in its toll collection methods, operations, rules, regulations, policies or procedures at any facility during the term of, and in connection with, with performance of the Counsel's services hereunder.

TBTA'S Non-toll Violation Matters

E-ZPass On-the-Go Retailers. TBTA also maintains an E-ZPass retail transponder tag sales program known as E-ZPass On-The-Go. The TBTA sells transponder tags to third party vendors for resale to customers for immediate use. Each transponder tag is preloaded with \$30 of value and sold in lots of 25 tags to authorized E-ZPass On-The-Go retailers. Retailers who fail to pay for their E-ZPass On-The-Go purchases may have their accounts sent to a collection agency. If the collection agency's attempts to collect the amounts owed to the TBTA fail, then the matter may be referred to Counsel.

Collection Services against TBTA Current and Former Employees. TBTA also seeks legal services to bring legal actions against current and former employees to recover amounts due to TBTA because of overpayments made to employees (i) with outstanding Absence Without Pay balances due and owing the Authority (AWOP Balances); and/or (ii) in excess of the reduced pay that those employees were entitled to receive while on active duty in the military ("Salary Overpayments").

II. SCOPE OF WORK

The services of Counsel shall generally consist of taking legal action against Port Authority and/or TBTA (collectively, "the Authorities") patrons that demonstrate a lack of responsiveness to efforts to collect unpaid tolls and E-ZPass Violation Administrative Fees and other amounts due. For the TBTA, legal services may also include taking legal action against vendors and current and former TBTA employees for amounts due to TBTA for "Non-Toll Violation Matters."

Services shall be performed on an "as needed" basis during 2013, with two, one-year options to renew at the discretion of the Port Authority and/or the TBTA.

Counsel shall take all legal steps required for settlement starting with the initial customer contact and lawsuit filing through securing and forwarding payment to the respective Authority, and providing written documentation of the specific services performed on a case-by-case basis. Specific toll violators and others chosen for action shall be as identified by the Authorities. Counsel shall be authorized to negotiate settlement of unpaid tolls and E-ZPass Violation Administrative Fees and other amounts due. However, Counsel is only authorized to accept settlements that recover all outstanding tolls pursued in the litigation. Further, all settlements must be approved by the respective Authority before accepted and executed by Counsel on behalf of said Authority.

III. DESCRIPTION OF COUNSEL'S TASKS

Tasks to be performed by Counsel, may include, but are not limited to:

TASK A. COLLECTION OF UNPAID TOLLS AND E-ZPASS VIOLATION ADMINISTRATIVE FEES

Perform all steps necessary to collect the unpaid tolls and related fees due to the respective Authority from toll violators, including pursuing legal action against these toll violators. This action includes:

1. Upon receipt of account information from the respective Authority, notify toll violators as to intent to file proof as to the unpaid tolls and E-ZPass Violation Administrative Fees with the court to obtain a civil judgment against the toll violators.
2. Provide the respective Authority with all drafts of letter, complaints and other legal papers and memoranda of law intended to be submitted to the Court in sufficient time for said Authority to review and comment, as appropriate. Said Authority's written approval must be obtained before such papers to the Court are served and filed.
3. Prepare and file legal papers, communicate with the defendant's counsel, and other relevant counsel, attend hearings, appear in court on behalf of the respective Authority in any proceedings, including appeals.
4. Submit to the respective Authority any proposed settlement offers in sufficient time for the said Authority to approve or reject the settlement offer.
5. After a judgment has been obtained, propose and implement any subsequent steps necessary to satisfy the judgment.
6. Propose any other remedies as may be permissible by law.
7. Provide expert witness testimony as to the information contained in invoices, notices and other documents and any certificates, affirmations, affidavits and/or statements that the evidence is supported by the procedures and processes for toll collection and toll collection enforcement systems as they relate to the New York E-ZPass Customer Service Center and the respective Authority facility or location, including, but not limited to the subsequent processing of violation images and data, and the generation of toll invoices and violation notices. This expert witness testimony shall supplement testimony available from the respective Authority representatives. The respective Authority must receive adequate notice that Counsel plans to retain experts on said Authority's behalf and obtain said Authority's written approval prior to such retention of experts.
8. Counsel's senior partner/partner in charge of representing the respective Authority shall hold telephone conference calls with said Authority's General Counsel and/or designee on a monthly basis, scheduled in advance with said Authority's General Counsel and/or designee, as required.
9. Coordinate with court administrators as required.
10. Secure payment and forward the amount in full to said Authority, along with any order, judgment, settlement or other documentation that concludes the matter.

TASK B. COLLECTION OF OTHER AMOUNTS OWED TO TBTA FROM NON-TOLL VIOLATION MATTERS

Perform all steps necessary to recover amounts due and owing TBTA from firms and individuals including but not limited to vendors and current and former TBTA including pursuing legal action against those firms and persons. This action includes:

1. Upon receipt of information regarding amounts due to TBTA, notify the vendor or employee as to intent to file proof as to the amounts due and owing to TBTA with the court to obtain a civil judgment against that vendor or employee.
2. Provide TBTA with all drafts of letters, complaints and other legal papers and memoranda of law intended to be submitted to the Court in sufficient time for said Authority to review and comment, as appropriate. TBTA's written approval must be obtained before such papers to the Court are served and filed.
3. Prepare and file legal papers, communicate with the defendant's counsel, and other relevant counsel, attend hearings, appear in court on behalf of TBTA in any proceedings, including appeals.
4. Submit to TBTA any proposed settlement offers in sufficient time for TBTA to approve or reject the settlement offer.
5. After a judgment has been obtained, propose and implement any subsequent steps necessary to satisfy the judgment, including recovery through the New York State Department of Taxation and Finance State-Wide Offset Program.
6. Propose any other remedies as may be permissible by law.
7. Counsel's senior partner/partner in charge of representing TBTA shall hold telephone conference calls with TBTA's General Counsel or her designee on a monthly basis, scheduled in advance with TBTA's General Counsel or her designee, as required.
8. Coordinate with court administrators as required.
9. Secure payment and forward the amount in full to said Authority, along with any order, judgment, settlement or other documentation that concludes the matter.

TASK C. ONSITE SERVICES

Provide the services of paralegal(s), to be located at each Authority as warranted by case volumes. The paralegals shall facilitate the normal and customary actions: gathering information; communicating with respective Authority staff as necessary; and supporting Counsel's efforts to collect unpaid tolls and violation fees, including the commencement of legal action against the toll violators and others related to Non-toll Violation Matters as required and as appropriate.

The Authorities shall each provide office space, telephone, and computer equipment for the paralegal(s). The Port Authority's office is located at 225 Park Avenue South, New York, NY. The TBTA's office is located at 2 Broadway, New York, NY 10004.

TASK D. ADDITIONAL SERVICES

1. Notify the respective Authority contact of the dates scheduled a minimum of 14 calendar days prior to any trial, inquest, or other court hearing or proceeding.
2. Take additional measures to enforce and satisfy any order, judgment or settlement including levies against assets, liens placed against property, wages garnished, and any other steps as may be necessary and approved by the respective Authority.
3. Payment to the respective Authority shall be made by individual check for each payment received on each account, submitted to the designated E-ZPass Project Manager, along

with formal documentation setting forth the payments obtained from any order, judgment, settlement or other documentation so that such amounts can be properly applied to the E-ZPass account(s) or violation account(s).

4. Submit monthly reports detailing accounting reconciliations. Report format shall be submitted and approved by each Authority prior to use. These reports shall set forth to date, the status of each account, including but not limited to:
 - a) total amount of tolls referred to Counsel to collect on each account and the period of time such tolls were incurred;
 - b) total amount of toll invoice fees and/or E-ZPass Violation Administrative Fees referred to Counsel to collect and the period of time such E-ZPass Violation Administrative Fees were incurred;
 - c) total amount of tolls collected and the period of time such collected tolls were incurred;
 - d) the total amount of toll invoice fees and/or E-ZPass Violation Administrative Fees demanded and the period of time such demanded toll invoice fees and/or E-ZPass Violation Administrative Fees were incurred;
 - e) total amount of toll invoice fees and/or E-ZPass Violation Administrative Fees collected and the period of time such collected toll invoice fees and/or E-ZPass Administrative Fees were incurred;
 - f) total amount of tolls in trust;
 - g) total amount of toll invoice fees and/or E-ZPass Violation Administrative Fees in trust;
 - h) total amount of tolls demanded and the period of time such demanded tolls were incurred;
 - i) total amount of tolls paid to the respective Authority and the period of time such tolls were incurred;
 - j) total amount of toll invoice fees and/or E-ZPass Violation Administrative Fees paid to the respective Authority and the period of time such toll invoice fees and/or E-ZPass Violation Administrative Fees were incurred;
 - k) total amount of tolls dismissed and the period of time such dismissed tolls were incurred;
 - l) total amount of toll invoice fees and/or E-ZPass Violation Administrative Fees dismissed and the period of time such dismissed toll invoice fees and/or E-ZPass Violation Administrative Fees were incurred;
 - m) beginning and ending dates of the toll violations that Counsel is pursuing to collect;
 - n) total settlement amount, showing the amount of tolls and toll invoice fees and/or E-ZPass Administrative Fees as well as when such tolls and toll invoice fees and/or E-ZPass Administrative Fees were incurred. Counsel is required to collect all outstanding unpaid tolls.

5. Submit monthly reports detailing post-order, judgment, settlement or other resolution activity by account, including method of such activity and amounts recovered through these remedies.
6. Provide detailed violation data on customer notices and correspondence. Manage information in a customer database, utilizing a database and accounting systems limited to referred accounts, that is structured for appropriate and efficient organization of information; and that contains provisions to ensure the confidentiality of the information.

TASK E. BUDGET SUBMITTALS

As accounts are identified by the Authorities, provide respective General Counsel and/or his/her designee, with a proposed budget detailing Counsel's estimate of the legal fees and expenses associated with each matter to be undertaken by the Counsel at the inception of the Counsel's provision of legal services with respect to such matter. Counsel shall provide respective General Counsel and/or designee with a quarterly update of the project budget reflecting any revisions to the Counsel's prior estimates during the pendency of such matter.

TASK F. ACCOUNT REFERRALS

Account files will be transferred to Counsel on a scheduled basis to be determined by the each Authority and in a data format stipulated by each Authority. Anticipated volumes of referrals are anticipated to be a minimum of 1,000 accounts per year.

Files will contain account information including:

- a. Name
- b. Account number
- c. Date and time of unpaid toll invoice transactions and violations
- d. Balance due on toll
- e. Balance due on E- ZPass account, if any
- f. Dispute status, if any
- g. Address fields
- h. Violation number
- i. Facility and lane violated
- j. Balance due on toll invoice fees and/or E-ZPass Violation Administrative Fee
- k. Vehicle license plate number
- l. Actions taken to recover unpaid tolls (orders, judgments, settlements, etc)
- m. Payments received, if any
- n. Negative Account Balance
- o. Date account went negative

IV. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Liability Insurance:

Counsel shall take out and maintain at its own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations, and Independent Contractor coverages in limits of not less than \$1,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. If vehicles are to be used to carry out the performance of this Contract, then Counsel shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$1,000,000 combined single limit per accident for bodily injury and property damage. Counsel shall take out, and maintain and pay the premiums for Professional Liability Insurance protecting Counsel against liability arising from professional services. A \$2,000,000 single limit per claim and a \$5,000,000 aggregate per policy period shall be afforded by this coverage. All endorsements and exclusions shall be evidenced on the certificate of insurance.

The coverage shall be written on an occurrence form or may be written on a claims made basis with a three-year reporting/discovery period.

In addition, the policy shall include The Port Authority of New York and New Jersey, and the Triborough Bridge and Tunnel Authority as additional insureds (other than Professional Liability) and shall contain a provision that the policy may not be canceled, terminated, or modified without thirty days written advance notice to the Project Manager. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent unendorsed Commercial General Liability Policy. The liability policy(ies) and certificate of insurance shall contain separation of insured's condition (cross-liability) and severability of interests so that coverage will respond as if separate policies were in force for each insured.

Further, the certificate of insurance and the liability Policy(ies) shall be specifically endorsed that *"The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the respective Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the respective Authority, the immunity of the respective Authority, its Commissioners, officers, agents or employees, the governmental nature of the respective Authority, or the provisions of any statues respecting suits against the respective Authority"*.

B. Workers' Compensation Insurance:

Counsel shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident.

C. Compliance:

Prior to commencement of work at the site, Counsel shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail, to the Project Manager.

- 1) Upon request of the Manager, Risk Management/Treasury, Counsel shall furnish to the respective Authority a certified copy of each policy itself, including the provisions establishing premiums.

- 2) The requirements for insurance procured by Counsel shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by Counsel under this contract. The insurance requirements are not a representation by said Authority as to the adequacy of the insurance to protect Counsel against the obligations imposed on Counsel by law or by this or any other Contract.
- 3) Renewal certificates of insurance or policies shall be delivered to the Project Manager, of each respective Authority at least fifteen (15) days prior to the expiration date of each expiring policy. Said Authority must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to either Authority, Counsel shall promptly obtain a new and satisfactory certificate and policy.
- 4) If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, Counsel shall suspend performance of the contract at the premises. If the contract is so suspended, no extension of time shall be due on account thereof. If the contract is not suspended (whether or not because of omission of the Manager to order suspension), then the respective Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by Counsel to the respective Authority.

* * *

ATTACHMENT B

PERFORMANCE OF EXPERT PROFESSIONAL LEGAL COUNSEL TOLL AND NON-TOLL COLLECTION AND RELATED SERVICES ON AN “AS NEEDED” BASIS

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority’s receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion (“Agreement”), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of the Port Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority’s Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY.
DO NOT RETYPE.

EXHIBIT A

**PERFORMANCE OF EXPERT PROFESSIONAL LEGAL
COUNSEL TOLL COLLECTION AND RELATED SERVICES
ON AN "AS NEEDED" BASIS**

RETAINER AGREEMENT

DATE

FIRM NAME
STREET
CITY, STATE ZIP

ATTENTION: ***

Dear Mr./Ms. _____:

This will confirm the arrangement governing the retention of the firm of _____ (the "Firm") by The Port Authority of New York and New Jersey (the "Port Authority"), to provide legal services, including, but not limited to, those set forth in Attachment "A", attached hereto and made a part hereof, to and as requested by the General Counsel of the Port Authority or his designee ("General Counsel"); such legal services pertain to pursuing high volume toll violators to collect unpaid tolls and E-ZPass Violation Administrative Fees owed to the Port Authority.

Any advice rendered by the Firm, whether oral or written, and all materials prepared by the Firm in providing such legal services, shall be rendered directly to the General Counsel, on a confidential, attorney-work-product basis. This retainer may be terminated by either party upon thirty-business days written notice to the other party. Any change in personnel shall be submitted and approved in writing by the General Counsel.

The Port Authority will pay to the Firm for all legal services, provided under this retainer, legal fees, on the basis of a contingency fee. These fees shall be calculated on the basis of a contingency fee that will not exceed ___% to be applied as a percent of the tolls and E-ZPass Violation Administrative Fees collected, plus an hourly rate for on-site paralegal services the Firm provides. The hourly rate for on-site paralegal services is set forth in Exhibit "C", which is attached hereto and made a part hereof. The Port Authority will also pay to the Firm all reasonable and necessary costs and disbursements paid or incurred by the Firm in connection with the provision of such legal services as approved in advance by the Port Authority. The Firm will bill the Port Authority for such legal services and disbursements, where practicable, on a monthly basis, and shall maintain accurate records substantiating all items for which compensation is sought. Such records shall be available for inspection by General Counsel upon reasonable prior notice to the Firm. Any proposed revision to the hourly charges described above shall be provided to General Counsel at least twenty business days prior to the effective date, but in no event shall the rates be adjusted during the first year of this Agreement.

At the request of General Counsel, the Firm shall provide General Counsel with a proposed budget detailing the Firm's estimate of the legal fees and expenses associated with each matter to be undertaken by the Firm at the inception of the Firm's provision of legal services with respect to such matter. The Firm shall also provide General Counsel with a quarterly update of such budget reflecting any revisions to the Firm's prior estimates during the pendency of such matter.

This retainer is made upon the understanding that (i) the Firm will not accept employment or be otherwise retained by any other party whose interests may be in conflict with those of the Port Authority; (ii) neither any Commissioner nor any officer, agent, representative or employee of the Port Authority shall be held personally liable by the Firm under any term or provision of this retainer or because of the execution or attempted execution of this retainer by the Port Authority or because of any breach thereof; and (iii) this retainer shall be governed by and construed in accordance with the laws of the State of New York.

This retainer shall be effective from and after the effective date of the agreement through December 31, 2013, with two, one-year options to renew at the Port Authority's discretion; unless earlier terminated by the Port Authority, in whole or in part, on thirty (30) days prior notice to the Firm.

Please confirm the foregoing arrangements by indicating your acceptance on the enclosed counterpart of this letter and returning such counterpart to me.

Very truly yours,

Darrell Buchbinder
General Counsel

Attachment

ACCEPTED:

NAME OF LAW FIRM

By: _____

Date: _____

_____, Esq.
_____, 2013

EXHIBIT B

**PERFORMANCE OF EXPERT PROFESSIONAL LEGAL
COUNSEL TOLL AND NON-TOLL COLLECTION AND RELATED SERVICES
ON AN “AS NEEDED” BASIS**

TBTA RETAINER AGREEMENT

{Date}

{Law Firm}

{Address}

Attention: _____, Esq.

Dear Counsel:

This letter sets forth the understanding we have reached concerning your firm's (the “Firm”) representation of the Triborough Bridge and Tunnel Authority (“TBTA”), an affiliate of the Metropolitan Transportation Authority (“MTA”), to provide legal services, including, but not limited to, those services set forth in Attachment “A,” which is attached hereto and made a part hereof, to and as requested by the General Counsel of the TBTA or his or her designee (“TBTA General Counsel”). Such legal services may pertain to, among other things, pursuing toll violators to collect unpaid tolls and violation fees incurred for the use of TBTA facilities. In addition, such legal services may also include legal actions against firms and individuals for amounts due TBTA from vendors and current and former TBTA employees. Such legal services shall include but are not limited to legal actions against E-ZPass On-The-Go retailers to collect amounts due TBTA under retail sales agreements with the retailers; and actions to recover overpayments made to former and current TBTA employees (i) with outstanding Absence Without Pay balances due and owing the Authority (AWOP Balances); and (ii) in excess of the reduced pay that they were entitled to receive while on active duty in the military (“Salary Overpayments”). Any advice rendered to the TBTA by the Firm, whether oral or written, and all materials prepared by the Firm in providing such legal services, shall be rendered directly to the TBTA General Counsel on a confidential, attorney-work product basis.

This Retainer Agreement is effective as of the date hereof and may be terminated by either party upon thirty (30) business days written notice to the other party.

Legal Requirements

The Firm shall comply with all applicable laws, codes, rules and regulations including, but not limited to, the Fair Debt Collection Practices and the Fair Credit Reporting Act. The Firm shall promptly give notice in writing to TBTA's General Counsel if the Firm or any partner becomes involved in any new legal or administrative investigations, actions or proceedings involving violations or alleged violations of the Fair Debt Collection Practices and the Fair Credit Reporting Act or any other federal, state or local law governing debt collection or legal practices or in the event that there is an adverse finding against the firm as a result of any such reported investigation, action or proceedings.

For all legal services the Firm provides to the TBTA under this retainer, the TBTA will pay the Firm legal fees calculated on the basis of a contingency fee that will not exceed ___% to be applied as a percent of the total amounts collected on behalf of TBTA, plus an hourly rate for on-site paralegal services the Firm provides. The hourly rate for on-site paralegal services is set forth in Exhibit C.

Payment to "Triborough Bridge and Tunnel Authority" shall be made by individual checks for each payment received on each TBTA collections matter undertaken by the Firm and is to be submitted to the TBTA Controller, along with formal documentation setting forth the payments recovered so that such amounts can be properly applied to the correct: (i) E-ZPass account(s); (ii) violation accounts(s): E-ZPass On-The-Go retailer or other vendor accounts; or (iv) Salary Overpayment account of any current or former TBTA employee.

Disbursements

Disbursements will be reimbursed to the Firm at the actual, necessary and reasonable cost without any markup. The TBTA expects that the Firm will obtain the lowest rates available for these expenditures. All disbursements shall be itemized by category and must be clearly reflected to include actual unit cost, e.g., copies, fax transmissions, travel.

Unless otherwise approved in advance by the TBTA General Counsel, the TBTA shall not pay for the following:

- Charges for computer research, other than for attorneys' or paralegals' time in conducting such research.
- Secretarial or word processing time (normal, temporary or overtime).
- Word processing or filing charges.
- Local telephone expenses.
- Fax transmissions or receipts.
- Taxis or private car services, except (i) for travel after 9:00 p.m. when the partner in charge of the matter determines that it is necessary to perform work on TBTA matters

after normal business hours, (ii) where public transportation is not reasonably available or (iii) where heavy or bulky material must also be transported.

- Meal charges, except for actual and reasonable expenses (i) when the partner in charge of the matter determines that it is necessary to perform work on TBTA matters after normal business hours or (ii) which are required for business purposes, such as working meals with TBTA representatives or expenses incurred while preparing a witness for trial.
- Time spent by attorneys or others in preparing or discussing bills.
- Time spent by attorneys or others in connection with audits and reviews of the TBTA's financial statements or litigation letter updates.

The Firm shall bill the TBTA for disbursements as follows:

Court costs and fees:

Long Distance Telephone Charges:

Actual cost.

Photocopying:

\$.10 per page or your actual cost, if lower, with the actual number of pages copied reflected on the invoice. Photocopying costs exceeding \$500 for a single job are to be authorized in advance by the TBTA General Counsel.

Out-of-Town Travel:

Coach fare (or private car reimbursement plus tolls) and actual, necessary and reasonable expenses for accommodations, breakfast and dinner.

Postage and Overnight Mail:

Actual cost.

Messenger Service:

Actual and reasonable cost of necessary (e.g., where fax or overnight transmittal will not suffice) messenger service.

The Firm shall submit itemized payment statements, which shall include detailed itemization by category substantiating all amounts received from each TBTA collection matter undertaken by the Firm as well as all disbursements to the TBTA General Counsel, where practicable, on a monthly basis. If a payment statement for services is not received within six months of the provision of such services, it is hereby agreed that the payment statement for services shall be deemed null and void and will not be paid unless proof of prior submittal is documented.

Upon request, the Firm shall provide the TBTA General Counsel with detailed documentation substantiating all amounts collected, paralegal services performed and all disbursements associated with each TBTA collection matter undertaken by the Firm. Payment statements and supporting documentation shall be maintained by the Firm for a period of three (3) years after the

completion of the matter. In addition, during that period, the TBTA shall have the right to examine such documentation and to audit the Firm's charges.

At the request of the TBTA General Counsel, the Firm shall provide the TBTA General Counsel with a proposed budget detailing the Firm's estimate of paralegal services and disbursements associated with each TBTA collection matter to be undertaken by the Firm at the inception of the Firm's provision of legal services with respect to such TBTA matter. The Firm shall also provide the TBTA General Counsel with a quarterly update of such budget reflecting any revisions to the Firm's prior estimates during the pendency of such TBTA matter.

When legal research is completed, a copy of the work product is to be sent to the TBTA General Counsel or his or her designee when a memorandum of law or less formal document is prepared.

The TBTA General Counsel must approve in writing in advance the Firm's retention of (i) any expert, consultant or individual not associated with the Firm or (ii) any other entity. The Firm shall obtain, and upon request shall provide the TBTA with, detailed documentation substantiating all fees and disbursements of every expert, consultant, individual or other entity so retained by the Firm. This documentation shall be maintained by the Firm for a period of three years after completion of the matter. During that period the TBTA shall have the right to examine such documentation and audit such charges.

Conflicts of Interest

Upon the Firm's agreement to the terms of this Retainer Agreement, you shall provide the TBTA General Counsel with a description of the Firm's procedure for determining the existence of an attorney-client conflict. Prior to and during representation of the TBTA on any matter, the Firm agrees to determine that no conflict exists that would prevent the Firm from undertaking or continuing this representation. In the event the Firm represents a client or clients who may have conflicting, inconsistent, diverse or otherwise discordant interests from those of the TBTA, the Firm shall provide the TBTA General Counsel with full disclosure as to these issues. The Firm shall not represent the TBTA on any matter where the TBTA General Counsel has determined a conflict to exist unless the Firm has obtained fully informed consent from the TBTA General Counsel.

New York State Procurement Lobbying Law Certification and Responsibility Data

The TBTA reserves the right to terminate this agreement in the event it is found that the certification filed by the Firm as proposer in accordance with the New York State Procurement Lobbying Law or any other certification filed by the Firm in connection with the RFP, including without limitation the Contractor Responsibility Data questionnaire, was intentionally false or intentionally incomplete. Upon such finding, the TBTA may exercise its termination right by providing written notice to the Firm.

Minority and Women-Owned Business Enterprises

It is the policy of the Authority that Minority and Women-Owned Business Enterprises ("M/WBEs") shall have the maximum opportunity to participate in the performance of the work pursuant to this Retainer Agreement. The Firm is advised that this Retainer Agreement is subject

to the provisions of Article 15-A of the New York State Executive Law (the “State M/WBE Law”) and implementing regulations set forth in Chapter XIV, Parts 140-144 of Title 5 NYCRR (the “Regulations”) establishing a policy and program of the State to promote equality of economic opportunity for business enterprises owned by minority groups and women. In the event that there is a difference between what is set forth in this Retainer Agreement and what is set forth in the State M/WBE Law and the Regulations, the State M/WBE Law and the Regulations shall govern. A copy of the State M/WBE Law and the Regulations shall be provided upon written request to the TBTA.

Affirmative Action/Equal Employment Opportunity Program

EEO/Non-Discrimination

The Firm will not discriminate against any employee or applicant for employment, including for work under any subcontract hereunder, because of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, predisposing genetic characteristic, gender identity, gender expression, domestic violence victim status, military or marital status, arrest/conviction records, or any other protected classification; nor will it discriminate against any person who is qualified and available to perform the work to which the performance relates. The Firm will undertake or continue existing programs to ensure that minority, women and other protected group members are afforded equal employment opportunities without discrimination because of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, predisposing genetic characteristic, gender identify, gender expression, domestic violence victim status, military or marital status, arrest/conviction records, or any other protected classification.

Affirmative Action/EEO Submission Requirements

The Firm will be required to submit an EEO Policy Statement and EEO 1 Form detailing the Firm’s current work force composition within seven (7) calendar days after it receives verbal notification. The TBTA General Counsel may extend the deadline for submission of an EEO 1 Form or an EEO Policy Statement. Any requests for an extension must be submitted to the TBTA General Counsel.

In considering future renewals of this Retainer Agreement, the TBTA will examine the Firm's equal employment opportunity data, including the number and percentages of women and minorities, to determine whether the Firm has improved or maintained its minority and women hiring practices.

Multi-Agency Use

The Metropolitan Transportation Authority and any of its subsidiary or affiliated agencies may utilize the same pricing, terms and conditions as set forth in this Contract.

Conclusion

This Retainer Agreement is made upon the understanding that (1) the Firm will not accept employment or be otherwise retained by any other party whose interests may be in conflict with

those of the TBTA; (2) no board member, officer, employee, agent or representative of the MTA or an MTA affiliate or subsidiary agency, including the TBTA, shall be held personally liable by the Firm under any term or provision of this Retainer Agreement or because of the execution or attempted execution of this Retainer Agreement by the TBTA or because of any breach thereof; and (3) this Retainer Agreement shall be governed by and construed in accordance with the laws of the State of New York.

This Retainer Agreement shall be effective from and after ____ 201__ through 201__, with two (2), one (1) year options to renew at the TBTA's discretion; unless earlier terminated by the TBTA, in whole or in part, on thirty (30) days prior notice to the Firm. Prior to the expiration or earlier termination of the Retainer Agreement, the Firm shall complete all collection matters referred to the Firm.

Please indicate your agreement with these terms by signing this original agreement and returning it to me. A copy is enclosed for your files.

Very truly yours,

M. Margaret Terry
General Counsel
Triborough Bridge and Tunnel Authority

AGREED:

NAME OF LAW FIRM

By: _____

Title: _____

Date: _____

ATTACHMENTS:

- Appendix A – N/A
- Appendix B – N/A
- Appendix C – Prompt Payment
- Appendix D – Minority and Women-Owned Enterprise Program
- Appendix E – Insurance
- Appendix F – Iran Divestment Act Certification
- TS-1 Scope of Work
- TS-2 Fee Schedule
- TS-3 N/A
- TS-4 Information to Be Furnished By a Proposer
- TS-5 N/A
- TS-6 Contractor Responsibility Form

EXHIBIT C
FEE SCHEDULE

Paralegal: \$_____ per hour

APPENDIX C

New York Codes, Rules and Regulations

Title 21. Miscellaneous

Chapter XXI. Metropolitan Transportation Authority

Subchapter A. All-Agency Rules and Regulations

Part 1002. Prompt Payment

SECTION 1002.1 POLICY

This statement is intended to establish rules and regulations as required under Section 2880 of the Public Authorities Law regarding the prompt payment policy of Triborough Bridge and Tunnel Authority ("TBTA"). Subject to the conditions and exceptions set forth in section 2880 and herein, in the event any proper invoice is not paid promptly, the TBTA shall be liable for the payment of interest on late payments. This policy shall apply to all contracts entered into on or after April 30, 1988.

SECTION 1002.2 DEFINITIONS

As used in this Part, the following terms shall have the following meanings unless otherwise specified:

- (a) Corporation means Triborough Bridge and Tunnel Authority.
- (b) Contract means an enforceable agreement entered into by a contractor and the Corporation, including but not limited to written contracts and purchase orders, written or oral requests for goods or services, including public utility services and lease agreements.
- (c) Contractor means any person, partnership, firm, corporation or association, including public utilities and not-for-profit organizations:
 - (1) selling materials, equipment, or supplies or leasing property or equipment to the Corporation; or
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Corporation;
or
 - (3) rendering or providing services to the Corporation pursuant to a contract.
- (d) Designated payment office means the office designated by the Corporation to which a proper invoice is to be submitted by a contractor.

(e) Payment date means the date on which a check for payment pursuant to a contract is dated.

(f) Proper invoice means a written request for a contract payment that is submitted by a contractor to the designated payment office setting forth the description, price, and quantity of goods, property or services delivered or rendered, in such form and supported by such other substantiating documentation as the Corporation may require.

(g) Receipt of an invoice ("ROI") means:

- (1) the date on which a proper invoice is actually received in the designated payment office; or
- (2) the date on which the Corporation receives the purchased goods, property or services covered by the proper invoice, whichever is later; or
- (3) in regard to progress payments on capital construction projects, the date on which there is concurrence between the contractor and the Project Manager or Chief Engineer or their designee with respect to the preliminary estimate of the value of work performed during the billing period; or
- (4) in regard to final payments on capital construction contracts, the date on which the contract work has been accepted as completed by the Project Manager or Chief Engineer of the Corporation or their designee; or
- (5) in regard to the deposit or submission by a contractor of bonds, notes, securities or other collateral in substitution for contract amounts retained by the Corporation, as permitted by statute or contract, the date the proper bonds, notes, securities or other collateral are deposited or submitted.

(h) Set-off means the reduction by the Corporation of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the Corporation, and shall include, but not be limited to, unused credit advices received from the contractor, liquidated damages under the contract, contractor liability for personal injury, property damage or other loss, damages for default regarding a proposal, or for breach of contract, as well as for any extra-contractual claim for liability or damages of any nature.

INTEREST ELIGIBILITY

1002.3 ELIGIBLE PAYMENTS

(a) With the exception of the payments described in subdivision (b) of this section, every payment of funds to a contractor pursuant to a contract, and every payment of interest pursuant to this Part, is eligible for interest whenever the payment is not made by the required payment date, unless failure to make such payment is the result of a lien, attachment or other legal process against the money

due the contractor. Notwithstanding the foregoing, interest shall not be paid that amounts to less than \$10.00.

(b) Payments are not eligible for interest under this Part when they are due and owing by the Corporation;

- (1) under the Eminent Domain Procedure Law;
- (2) as interest allowed on judgments rendered by a court, except to the extent that interest is incurred under this Part prior to the date of the notice of intent to file a claim, the date of a notice of claim, or the date on which a legal action for the payment of such interest is commenced, whichever occurs first;
- (3) to the Federal government; to any State agency or its related instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any public authority or public benefit corporation; or to employees of the Corporation when acting in, or incidental to, their public employment capacity; and
- (4) in situations where the corporation exercises a legally authorized setoff against all or part of the payment due the contractor.

1002.4 REQUIRED PAYMENT DATE

(a) Effective through June 30, 1989, the required payment date shall be 45 calendar days after the ROI date.

(b) Effective July 1, 1989, the required payment date shall be 30 calendar days, excluding legal holidays, after ROI date.

1002.5 RECEIPT OF INVOICE DATE

(a) Effective June 30, 1989. Except where adjusted pursuant to sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12, or 1002.13 of this Part, the ROI date shall be:

- (1) in the case of final payments on capital construction contracts, 30 calendar days after the date on which the contract work has been accepted by the Project Manager or Chief Engineer of the Corporation or their designee;
- (2) in the case of contracts which required that the contractor be paid at predetermined intervals, other than leases licenses or permits relating to the use of real property, the 45th calendar day prior to each payment date specified in the contract, or the date upon which a proper invoice, if required, is submitted, whichever date is later; or
- (3) in the case of periodic payments pursuant to leases, licenses or permits relating to the use of real property of which an invoice is not required by the instrument, the 45th day prior to the last day under the instrument on which payment may be made without penalty, or the 45th

day prior to the 20th day after the payment due date where the instrument does not provide for a penalty upon late payment;

- (4) in the case of interest payments required to be paid pursuant to this Part, the payment date for the late payment as to which interest is due;
- (5) in all other cases, the date of the receipt of a proper invoice as defined in section 1002.2(g) of this Part.

(b) The ROI date determined in accordance with subdivision (a) of this section shall be adjusted in the situations described in Section 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 and 1002.13 of this Part, in accordance with the procedures outlined in those sections.

(c) Effective July 1, 1989. Except where adjusted pursuant to sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12, or 1002.13 of this Part, the ROI date shall be:

- (1) in the case of final payments on capital construction contracts, 30 calendar days after the date on which the contract work has been accepted by the Project Manager or Chief Engineer of the Corporation or their designee;
- (2) in the case of contracts which required that the contractor be paid at predetermined intervals, other than leases licenses or permits relating to the use of real property, the 30th calendar day prior to each payment date specified in the contract, or the date upon which a proper invoice, if required, is submitted, whichever date is later; or
- (3) in the case of periodic payments pursuant to leases, licenses or permits relating to the use of real property of which an invoice is not required by the instrument, the 30th day prior to the last day under the instrument on which payment may be made without penalty, or the 30th day prior to the 20th day after the payment due date where the instrument does not provide for a penalty upon late payment;
- (4) in the case of interest payments required to be paid pursuant to this Part, the payment date for the late payment as to which interest is due;
- (5) in all other cases, the date of the receipt of a proper invoice as defined in section 1002.2(g) of this Part.

(d) The ROI date determined in accordance with subdivision (a) of this section shall be adjusted in the situations described in Section 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 and 1002.13 of this Part, in accordance with the procedures outlined in those sections.

1002.6

INTEREST ELIGIBILITY

(a) Effective through June 30, 1989, interest shall be calculated and paid at the daily rate pursuant to section 1002.7 of this Part on all interest eligible payments, as determined in accordance with Section 1002.3 of this Part, when the payment date is more than 45 calendar days after the ROI date.

(b) Effective July 1, 1989, interest shall be calculated and paid at the daily rate pursuant to section 1002.7 of this Part on all interest eligible payments, as determined in accordance with section 1002.3 of this Part, when the payment date is more than 30 calendar days, excluding legal holidays, after the ROI date.

1002.7 Computation of Interest Payment

(a) Interest under this Part shall be computed at the daily rate in effect on the date the interest is paid, as set by the State Tax Commission for corporate taxes pursuant to section 1096(e) (1) of the Tax Law.

(b) Interest payments on amounts due to a contractor pursuant to this Part shall be paid to the contractor for the period beginning on the day after the required payment date and ending on the payment date.

(c) In the case of interest payments of amounts due to a contractor pursuant to this Part under a lease, license or permit in relation to the use of real property, where the instrument provides for a penalty for late payment, the Corporation shall pay the contractor the greater of the interest the contractor would be entitled to pursuant to this Part, or the penalty provided for under the instrument, but not both.

(d) In no event shall interest accrue beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

ADJUSTMENT OF ROI DATE

1002.8 INSPECTION OR AUDIT

(a) The ROI date shall be adjusted in accordance with subdivision (b) or (c) of this section whenever, in accordance with specific provisions of statute, regulation or the contract, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract or otherwise to verify that the work, goods or services billed for were provided in accordance with the contract.

(b) Except as provided in subdivision (c) of this section, where a contract provides for an inspection or audit period, the ROI date shall be the original ROI date increased by the lesser of:

- (1) the number of days provided for the inspection or audit; or
- (2) the number of days actually utilized for the inspection or audit; provided, however, that where the audit or inspection period began prior to the date of receipt of an invoice, the ROI date shall be the date that the required inspection or audit has been completed, or the date that the statutory, regulatory or contractual inspection or audit period ends, whichever date is earlier, but in no event shall the ROI date be earlier than the date of the receipt of an invoice as defined in section 1002.2(g) of this Part.

(c) Whenever in the course of an audit or inspection as described in subdivision (a) of this section, the Corporation determines that there is a defect in the delivered goods, property or service, or defects in the invoice, or suspected improprieties of any kind, the Corporation shall, no later than the expiration of the statutory or contractual audit or inspection period, notify the contractor of the defect or impropriety. In such case, the ROI date shall be the date that the corrected invoice, or goods or services, are delivered or provided, or the date that the impropriety is resolved, except where the Corporation has failed to notify the contractor of such defect or suspected impropriety prior to the expiration of the audit or inspection period. In such case, the ROI date shall be the ROI date as determined in accordance with the preceding sentence, reduced by the number of days after the expiration of the audit or inspection period which the agency took to notify the contractor of the defect or suspected impropriety.

1002.9 LACK OF APPROPRIATION OR FUNDS

(a) The ROI date shall be determined in accordance with subdivision (b) of this section whenever the necessary Federal, State, or local government appropriation or action required to authorize payment has yet to be enacted or taken or the funds have not been released.

(b) (1) Except in the situations covered by paragraph (2) of this subdivision, the ROI date shall be the effective date of the required appropriation, action or release of funds.

(2) Where the ROI date would otherwise be determined in accordance with section 1002.5(a) (2) of this Part and the appropriation or action to authorize payment is not in effect on the payment date specified in the contract or the funds have not been released, the ROI date shall be the ROI date determined in accordance with section 1002.5(c) (2) of this Part increased by the number of days between the payment date specified in the contract and the date the appropriation or action is effective or the funds are released.

1002.10 GOVERNMENT REVIEW OF INVOICE

(a) The ROI date shall be determined in accordance with subdivision (b) of this section whenever a proper invoice must be examined by the Federal, State or a local government prior to payment or whenever payment of an invoice must be processed by an entity, including but not limited to a government agency or public authority that is not under the Corporation's control.

(b) The ROI date shall be the original ROI date increased by a number of days equal to the number of days between the date that the Corporation transmits the invoice to the Federal, State or local government for examination and the date that the Corporation receives the approved invoice from the government entity following its review or the number of days between the date that the Corporation submits the invoice for payment to an entity not under its control and the date on which that entity pays the invoice.

1002.11

NONCOMPLIANCE WITH CONTRACT

- (a) The ROI date shall be determined in accordance with subdivision (c) of this section whenever the goods or property have not been delivered or the services have not been rendered by the contractor in compliance with the terms or conditions of the contract, including but not limited to over- or under-shipment of goods.
- (b) The Corporation shall notify the contractor in what respect the delivered goods or the rendered services are not in compliance with the contract. The notice shall further inform the contractor of what action the Corporation requires by the contractor in order to rectify the areas of noncompliance.
- (c) The ROI date shall be the original ROI date increased by a number of days equal to the number of days between the date that the agency sends a written notice to the contractor that the delivered goods or the rendered services are not in compliance with the contract and the date that the areas of noncompliance are resolved to the Corporation's satisfaction.

1002.12

CAPITAL CONSTRUCTION CONTRACTS

- (a) The ROI date shall be adjusted whenever, in the case of any payments on capital construction contracts, the Corporation's Project Manager or Chief Engineer or their designee determines that the contractor has failed to properly submit the necessary documents and other materials prescribed by or provided for in the contract specifications, terms and conditions, or requirements, or by any applicable local, State and Federal law or regulation, in order to enable the Corporation to process the payment properly and expeditiously.
- (b) The Corporation's Project Manager or Chief Engineer or their designee shall send written notice to the contractor of his failure to submit the necessary documents and materials. The notice shall indicate all documents and materials required.
- (c) The ROI date shall be the original ROI date increased by the number of days beginning on the date that the Corporation's Project Manager or Chief Engineer or their designee sends written notice to the contractor of his failure to submit the necessary documents and materials and ending on the date that the Corporation receives the necessary documents and materials.

1002.13

NOTICE OF DEFECTS

- (a) The Corporation shall have 15 calendar days after receipt of an invoice at its designated payment office to notify the contractor of (1) defects in the delivered goods, property or services, (2) defects in the invoice, or (3) suspected improprieties of any kind.
- (b) Except as provided in subdivision (c) of this section, when the Corporation notifies a contractor of such defects or suspected improprieties and the contractor thereafter submits a corrected invoice or delivers corrected goods or services, the ROI date shall be the date upon which the corrected invoice or corrected goods or services are received by the Corporation. If a corrected invoice or corrected goods

or services are not required, the ROI date shall be the date upon which the Corporation determines that the suspected improprieties have been resolved.

(c) If the Corporation fails to notify a contractor of such defects or suspected improprieties within 15 calendar days of receipt of an invoice, the ROI date, as determined by subdivision (b) of this section, shall be adjusted to an earlier date by the number of days equal to the days in excess of 15 that the Corporation took after receipt of an invoice to notify the contractor of the defects or suspected improprieties.

MISCELLANEOUS

1002.14 SOURCES OF FUNDS

For interest payments required by this Part covering invoices on purchased goods, property or services which are other than capital in nature, the Corporation may use operating revenues, State and local operating assistance funds, State and local tax subsidies, investment income, and any other sources of operating funds which are or may become available for such purpose. For interest payments required by this Part covering invoices on purchased goods, property or services which are of a capital nature, the Corporation may use any available governmental capital appropriations, Triborough Bridge and Tunnel Authority Investment Income, MTA Investment Income, and any other sources of capital funds which are or may become available for such purpose.

1002.15 NO WAIVER OR ESTOPPEL

(a) No acceptance or other certificate given by the Corporation under this Part or the payment of interest, shall be construed to waive or estop the Corporation from asserting any claim or right relating to any defect or nonconformity in any goods, work or services, whether patent or latent, regardless of when discovered.

(b) No obligation or liability for interest, nor the actual payment of any such interest under this Part, shall be construed as indicating or implying that the contractor's performance relating to such payment was in all respects satisfactory, acceptable, proper or in conformance with the contract documents, and the fact that the Corporation may have paid or be obligated to pay such interest, shall not preclude the Corporation from later determining that the work performed or goods delivered, as the case may be, was not satisfactory or acceptable or proper or in conformance with the contract.

1002.16 REVIEW

(a) Any determination made by the Corporation pursuant to this Part that prevents the commencement of or interrupts the time in which interest will be paid shall be subject to administrative review. A contractor aggrieved by any such determination of the Corporation shall, within 30 calendar days of the date of the determination or the payment of the invoice, whichever is later, submit a notice of intention to make a claim for interest in writing to the Comptroller of the Corporation. The notice of intention to make a claim for interest shall include an

identification of the contract, by date and number, under which the claim is made, the date on which a proper invoice was submitted, or on which the goods or services were delivered, or on which payment was otherwise due, the reason given by the Corporation, if any, for why commencement of the time in which interest was to be paid was prevented or interrupted, and the facts and circumstances which, in the Contractor's opinion, show that the commencement of the time in which interest was to be paid should not have been prevented or interrupted.

(b) A notice of intention to make a claim for interest under this section must be received by the Comptroller of the Corporation no later than 30 days from the determination of the Corporation being challenged or the payment of the invoice, whichever is later. Within 30 calendar days of timely receipt of a proper and complete notice of intention to submit a claim for interest, the Comptroller of the Corporation shall either deny the claim or grant the claim in whole or in part. If the Comptroller grants the claim in whole or in part, the Corporation shall, within seven calendar days, excluding legal holidays, pay the contractor the additional interest to which he is entitled. A failure by the Comptroller to rule on a claim within this section within 30 calendar days shall be deemed a denial of such claim.

(c) A determination by the comptroller of the Corporation adverse to the contractor either in whole or in part shall be subject to judicial review in a proceeding pursuant to article 78 of the Civil Practice Law and Rules. No determination by the Corporation under this Part which has not first been reviewed by the Comptroller of the Corporation pursuant to this section shall be subject to judicial review.

1002.17

RECOVERY OF INTEREST

In any case where the Corporation has paid interest under this Part and later determines that the interest was wrongly or incorrectly paid, whether because of mistaken calculation of delay in payment or of interest due, or because the payment made, or any part of it, was not properly due to the contractor for any reason, or because of any other circumstance or state of facts, the Corporation may recover the interest wrongly or incorrectly paid by means of a demand to the contractor for the repayment of the interest or a setoff against future payments to the contractor or by any other lawful means including a court action or proceeding.

APPENDIX D

Minority and Women-Owned Business Enterprise Program Submission Requirements (Requests for Proposals)

A. NEW YORK STATE LAW AND REGULATIONS

Proposers are advised that this contract is subject to the provisions of Article 15-A of the New York Executive Law (the "State MBE/WBE Law") and implementing regulations set forth in Chapter XIV, Parts 140 to 145 of Title 5 NYCRR (the "Regulations") establishing a policy and program of the State to promote equality of economic opportunity for business enterprises owned by minority group members and women. It is the policy of the Metropolitan Transportation Authority ("MTA") and its subsidiary and affiliated agencies that Minority and Women-Owned Business Enterprises ("MBE/WBEs"), which are certified as such by Empire State Development, Division of Minority and Women's Business Development ("DMWBD"), are provided the maximum feasible opportunity to participate in the performance of this contract. Each proposer shall take all necessary and reasonable steps to ensure that MBE/WBEs participate and perform work on this contract. A copy of the applicable State MBE/WBE Law and Regulations is available upon written request to the Authority's Contract Manager ("Contract Manager").

For this contract, the Contract Manager's name, telephone number and address are:

Name: Lynn Gore

Telephone No.: (646) 252-7063

Address: 2 Broadway
24th Floor
New York, NY 10004

B. CONTRACT PROVISIONS

The successful proposer and the Authority agree as a condition for the award of this contract, to be bound by the provisions of the State MBE/WBE Law and the accompanying Regulations. This Appendix summarizes the relevant provisions of the State MBE/WBE Law and the Regulations. Unless otherwise stated, all terms used in this Appendix shall have the meaning ascribed to them in the State

MBE/WBE Law and the Regulations. In the event there is a difference between what is set forth in this Appendix and what is set forth in the State MBE/WBE Law and the Regulations, which are incorporated herein by reference, the State MBE/WBE Law and the Regulations shall govern. The term contractor refers to contractor or consultant, and the term subcontractor refers to subcontractor or subconsultant.

C. GOALS

The respective goals specified for the utilization of minority and women-owned business enterprises expressed as a percentage of the total contract price, including change orders issued pursuant to the changes provision of this contract are:

TBD% for MBE

and

TBD% for WBE

These goal percentages are subject to the requirements of the State MBE/WBE Law, the Regulations and the provisions of this contract. In the event the successful proposer's proposed level of MBE/WBE participation is less than this prescribed level of MBE/WBE participation, to remain eligible for contract award, the successful proposer must satisfy the good faith efforts requirements set forth in paragraph L below.

The MTA Department of Diversity and Civil Rights, acting on behalf of the Authority, is responsible for determining compliance by the proposer/offeree with MBE/WBE requirements established in this contract. The successful proposer/offeree shall make all MBE/WBE-related submissions required by this contract to the Contract Manager with a copy to the MTA Department of Diversity and Civil Rights, to the attention of:

Name:

Metropolitan Transportation Authority
Department of Diversity and Civil Rights
2 Broadway, 16th Floor
New York, NY 10004

D. STATE DIRECTORY

1. In accordance with the State MBE/WBE Law, DMWBD is empowered and requires its director (the "Director"), among other things, to promulgate a directory (the "State Directory") of minority and women-owned business enterprises certified pursuant to the Regulations ("certified businesses"). The State Directory may be accessed on line at: www.empire.state.ny.us.
2. Under the State MBE/WBE Law and Regulations, proposers can only use MBEs and WBEs listed in the State Directory to satisfy the goals in the contract. For the purpose of the federal government's Disadvantaged Business Enterprise ("DBE") Program, the MTA Department of Diversity and Civil Rights has certified certain minority and women-owned business enterprises as DBEs. A firm certified by the MTA Department of Diversity and Civil Rights as a DBE for the federal DBE program, which is not listed in the State Directory may not be used to satisfy MBE/WBE goals established for this contract. **YOU MUST USE THOSE FIRMS IN THE STATE DIRECTORY.**

E. PROMPT PAYMENT TO SUBCONTRACTORS AND RETAINAGE

For public work contracts, the prime contractor is required by law to pay all subcontractors, including each MBE/WBE subcontractor under this prime contract for the work performed under its subcontract no later than seven (7) calendar days from the receipt of any payment the prime contractor receives from the Authority for work performed by the subcontractor, and to pay interest at the rate required by law if payment is not made within the aforesaid seven (7) calendar days.

For all contracts other than public work contracts, the prime contractor agrees to pay all subcontractors under this prime contract for the satisfactory performance of their subcontracts no later than thirty (30) days from the receipt of each payment the prime contractor receives from the Authority for work performed by the subcontractor.

If this prime contract includes retainage, the prime contractor may not retain more than the lesser of five percent (5%) or the retainage percentage provided in the contract between the Authority and prime contractor, except that the prime contractor may retain not more than ten percent (10%) of each payment to the subcontractor where, prior to entering into a subcontract with the prime contractor, the prime contractor requested that the subcontractor provide a performance bond and a payment bond for

subcontractors, labor and/or material suppliers, each in the full amount of the subcontract and the subcontractor was unable or unwilling to provide such bonds.

The prime contractor must return retainage to any subcontractors within thirty (30) days of receiving a payment from the Authority which returns the prime contractor's retainage for work satisfactorily performed by the subcontractor.

F. MBE/WBE UTILIZATION PLAN

1. A proposer is required to include in its technical proposal its MBE/WBE Utilization Plan. The MBE/WBE Utilization Plan shall include the name, address, telephone number and Federal identification number of the proposer. The MBE/WBE Utilization Plan description shall include a statement that the proposer will achieve the MBE/WBE goals or use good faith efforts to do so as specified in this Appendix and shall show for each MBE/WBE firm: (i) the name, address and Federal identification number of the MBE/WBE the proposer intends to use if awarded this contract, (ii) a description of the services/work to be performed by the MBE/WBE and, (iii) the estimated or, if known, actual dollar amounts to be paid to the MBE/WBE firm, and (iv) the approximate performance dates of each component of the contract to be performed by each such MBE/WBE firm.
2. A proposer is required to submit with its cost proposal a properly completed and executed "MBE/WBE Utilization Plan Form" (Form 15A.1) and an Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4) for each MBE/WBE firm identified on Form 15A.1. The cost proposal shall include the dollar value and cost breakdown of each subcontract for each MBE/WBE identified in the technical proposal. Proposers have been furnished with these forms in the solicitation document. Additional forms may be obtained from the MTA Department of Diversity and Civil Rights. The Authority, in its sole discretion, may extend the submission period for a reasonable time.
3. If a proposer is a joint venture, or has a teaming agreement, or other similar arrangement that includes a MBE/WBE, and proposes to include such MBE/WBE participation in its proposal for meeting the goals, it must submit the following to the Contract Manager for review and approval:
 - a. The name, address, telephone number and Federal identification of each partner or party to the agreement;

- b. The Federal identification number of the joint venture or entity established to respond to this solicitation, if applicable;
 - c. A copy of the agreement establishing the joint venture, team, or other similar arrangement. If that agreement does not specify and describe the percentage of interest owned by each party to the agreement and the value contributed/added by each party, you must provide copies of other document(s) which provide the missing information; and
 - d. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, the teaming agreement or other similar arrangement.
4. If a revised scope of services or cost proposal is requested by the Contract Manager, unless otherwise approved in writing in advance by the Contract Manager, a revised MBE/WBE Utilization Plan Form (Form 15A.1) and the accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4) for each MBE/WBE firm identified on the Form 15A.1, must be submitted which: (i) achieves the percentage goals set forth in paragraph C, and (ii) provides for the proposer to use the same MBE/WBE firms specified in its original MBE/WBE Utilization Plan Form (Form 15A.1) or as specified in paragraph J.
5. By listing a firm on its MBE/WBE Utilization Plan Form (Form 15A.1) and submitting the accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), the proposer is representing the following:
 - a. It intends to use the firm for the work specified in the MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), including any change order work required to perform the specified work;
 - b. On the basis of information known to it and after reasonable inquiry, it believes such firm is a certified MBE/WBE and is technically and financially qualified to perform the work specified and that the firm is available to perform the work;
 - c. If it is awarded the contract, it will enter into a subcontract with such MBE/WBE (or an approved substitute), subject to the terms and conditions of this contract, and provided that the MBE/WBE is certified by the NYS DMWBD for the work described and at the price set forth in the MBE/WBE

Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4);

- d. It will not substitute a MBE/WBE firm listed in its MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), unless the Authority provides prior written approval in accordance with paragraph O below; and
- e. If proposer is a MBE/WBE and lists itself on the MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as Subcontractor/Subconsultant Form (Form 15A.4), that it will perform the work specified therein with its own workforce; and
- f. If the proposer is part of a joint venture, or has a teaming agreement, or other similar arrangement with a certified MBE/WBE, its value added or participation is equal to the percentage of the goals set forth in proposal.

G. CONTRACTOR'S OBLIGATION TO MEET MBE/WBE GOALS

A contractor is contractually obligated to make good faith efforts to meet MBE/WBE goals in its approved MBE/WBE Utilization Plan using the certified MBE/WBE firms to the extent indicated. If the contractor is unable for any reason to meet the goal or utilize a previously identified MBE/WBE firm in an approved plan, the contractor must promptly give written notice to the MTA Department of Diversity and Civil Rights with details of deficiency and the plan to remedy the deficiency. Any request by a contractor for a waiver of goals contained in its approved MBE/WBE Utilization Plan must be made in accordance with paragraph J of this Appendix. A contractor remains obligated to make good faith efforts to meet the goals in its approved MBE/WBE Utilization Plan using the certified MBE/WBE firms identified in its Plan, absent the contractor having been granted a waiver.

H. CREDIT TOWARD MBE/WBE GOALS

No credit toward meeting either or both the MBE or WBE goal will be allowed unless the DMWBD has certified a firm as a MBE or WBE. Only the value of the work actually performed by the MBE or WBE will be counted toward the respective goal.

1. The MTA Department of Diversity and Civil Rights will credit expenditures to a MBE/WBE contractor toward MBE/WBE goals, only if the MBE/WBE provides an actual service other than acting as an intermediary between a supplier and customer. Contractors using MBE or WBE firms merely to pass through funds and invoices will not be given credit toward the goal. Contractors are prohibited from claiming credit toward the goal from any such uses of MBE or WBE firms.
2. A prime contractor which is certified as a MBE may use the work it performs to meet the MBE goal and a prime contractor which is certified as a WBE may use the work it performs to meet the WBE goal.
3. A firm which is certified both as a MBE and a WBE may be counted towards either a MBE goal or a WBE goal but such participation may not be counted towards both goals or divided between the MBE goal and the WBE goal.
4. The MTA Department of Diversity and Civil Rights will only allow 25% credit of the total cost for supplies toward achievement of the MBE/WBE goal if a firm is certified as a broker. If a firm is certified as a supplier, the MTA Department of Diversity and Civil Rights will credit 100% of the total cost toward achievement of the MBE/WBE goal.

I. DEFICIENCIES IN PROPOSER MBE/WBE UTILIZATION PLAN

Within twenty (20) days of receipt of a proposer's MBE/WBE Utilization Plan, the Contract Manager will send a written notice to the proposer of acceptance or deficiency of the Plan. If the notice specifies a deficiency, within seven (7) business days after receipt, the proposer must deliver to the Contract Manager a written response to the notice of deficiency. Failure to timely respond may be grounds for disqualification.

The Contract Manager may agree in writing to allow (i) additional time to submit, or (ii) additional submissions after the seven (7) business day period, based upon its determination that the proposer is making a good faith attempt to submit a response or to correct the deficiencies.

J. WAIVERS

1. When to Request a Total or Partial Waiver:

- a. If the contract has not yet been awarded, a proposer may request a waiver simultaneously with the proposer's submission of its MBE/WBE Utilization Plan, if that plan fails to demonstrate that the firm will meet the goals.

- b. If a proposer's remedy to a notice of deficiency of the MBE/WBE Utilization Plan is not timely provided or is found by the Authority to be inadequate, the proposer shall request a waiver within five (5) business days of request by the Authority.
 - c. If the contract has been awarded to the firm and its MBE/WBE Utilization Plan has been approved, the contractor shall request a waiver at the earlier of the following: a) promptly after the contractor realizes that it will not meet the goals; or b) prior to the submission of request for final payment on the contract.
2. Waiver Form: A request for a waiver must be made by submitting a completed "Request for Total or Partial Waiver of MBE/WBE Goals Pursuant to MBE/WBE Utilization Plan Form" (Form 15A.2) and the information specified therein. Additional forms are available upon request from the Contract Manager.
3. Evaluation of Requests: The MTA Department of Diversity and Civil Rights will evaluate and determine whether to grant a request for a total or partial waiver of goal requirements in accordance with the Regulations and on the basis of the information provided on Form 15A.2 and such other information as the MTA Department of Diversity and Civil Rights deems relevant. The goals set by the MTA Department of Diversity and Civil Rights are based on the criteria set forth in the Regulations. The MTA Department of Diversity and Civil Rights will consider whether the proposer/contractor made good faith efforts to identify and afford subcontracting opportunities to MBEs and WBEs, which were technically and financially qualified to perform the work specified, available to perform the work, and submitted competitive proposals.
4. A contractor requesting a waiver shall submit its written request to the Contract Manager, with a copy to the MTA Department of Diversity and Civil Rights. Requests for a waiver shall include a copy of all documentation supporting the request as specified in the Regulations and in Form 15A.2. The contractor and/or subcontractor shall supply any additional information and/or documentation applicable to the request for a waiver that the Contract Manager or the MTA Department of Diversity and Civil Rights requests. Contractors and/or subcontractors that intend to file a post-award request for a waiver will be subject to all pre-award MBE and WBE requirements set forth in the contract documents.

K. GOOD FAITH EFFORTS

The MTA Department of Diversity and Civil Rights shall not grant any automatic waivers of goal requirements but may consider any criteria it determines relevant or which a proposer/contractor submits to document its good faith efforts, provided that the criteria set forth in the Regulations (*see* Section 142.8) will, at a minimum, be considered for purposes of determining whether a proposer/contractor has documented good faith efforts.

L. DISQUALIFICATION OF PROPOSER

The Authority may disqualify a proposer as non-responsible: (i) for failure to submit a MBE/WBE Utilization Plan; (ii) for failure to respond to deficiencies in the MBE/WBE Utilization Plan notice in accordance with paragraph I above; or (iii) upon a determination that the proposer's MBE/WBE Utilization Plan does not show that the goal requirements will be met and the proposer has not documented that it has made good faith efforts to develop a MBE/WBE Utilization Plan that satisfies the goal requirements. The Authority shall issue to a disqualified proposer a notice of disqualification and statement of reasons for its final decision. The disqualified proposer may request a hearing in accordance with the procedures outlined in Executive Law Article 15-A and the Regulations. See paragraph M, below.

M. COMPLAINTS BY A PROPOSER

A proposer who has received a written notice of disqualification prior to the award of a contract, as outlined above, may file a complaint with the Executive Director of the DMWBD ("Director") within five (5) days of receiving such a notice. The proposer shall serve a copy of its complaint upon the Director and the Authority by personal service or certified mail, return receipt requested.

After the contract has been awarded, a contractor who is notified by the Authority that its MBE/WBE Utilization Plan is deficient may file a complaint within twenty (20) days of such notice with the Director asserting that the Authority unreasonably: (i) denied in whole or part a request for waiver of a goal; (ii) determined that the contractor has not acted in good faith, has failed, or is failing or refusing to comply with a goal; or (iii) failed to grant or deny a request for waiver within twenty (20) days of its receipt of a completed Form 15A.2.

The procedure and requirements for filing and resolving such a complaint are set forth in the Regulations.

N. REMEDIES FOR CONTRACTOR'S FAILURES

In the event of a contractor's willful and intentional failure to comply with the State MBE/WBE Law, the Regulations or the provisions of this contract governing MBE/WBE participation requirements, and in the event the Authority elects not to follow the procedures set forth in paragraph U below, the contractor shall be liable to the Authority for liquidated damages in an amount equal to fifty percent (50%) of the difference between the dollar amount of MBE/WBE participation set forth in the contractor's approved MBE/WBE Utilization Plan and the actual dollar amount credited by the Authority for such participation. Such a willful and intentional failure on the part of the contractor shall also constitute a breach of this contract and the Authority may avail itself of such other remedies as are provided in the contract or at law or equity on account of such breach.

O. MBE/WBE MODIFICATIONS

In the event that a contractor wishes to modify its MBE/WBE Utilization Plan (Form 15A.1) after its submission or after a contract is awarded, then the contractor must notify Project Manager (with a copy to the Contract Manager), in writing, and request approval for the modification. A prime contractor may not, without the Authority's prior consent, terminate for convenience a MBE or WBE subcontract approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or MBE/WBE firms, which differ from those identified on the approved MBE/WBE Utilization Plan (Form 15A.1). When a MBE/WBE subcontractor or subconsultant is terminated or fails to complete its work for any reason, the prime contractor must make good faith efforts to find another MBE/WBE subcontractor to substitute for the original MBE/WBE. These good faith efforts must be directed at finding other MBE/WBEs to perform at least the same amount of work under the contract as the former MBE/WBE to the extent needed to meet the contract goal. The contractor must provide the Project Manager (with a copy to the Contract Manager) with any and all documentation and information as may be requested with respect to the modification, which, at a minimum must include the documentation detailed in Section 142.8(a) of the Regulations. If the MTA Department of Diversity and Civil Rights determines that the prime contractor failed to make good faith efforts, the Authority may avail itself of the remedies included in this contract.

P. EEO/NON-DISCRIMINATION

1. The proposer agrees as a precondition to entering into a valid and binding contract, not to discriminate against any employee or applicant for employment for work under this contract, or any subcontract hereunder, by reason of race, creed, color, national origin, sex, age, disability or marital status, and that it shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on this contract. The proposer agrees to undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The proposer shall submit prior to the award of this contract, an equal employment opportunity ("EEO") policy statement to the Authority within seven days of receiving a notice of selection. The proposer's EEO policy statement must include the following language:
 - a. The contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on the contract.

 - b. The contractor will state in all solicitations or advertisements for employees that in the performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination.

 - c. At the request of the Authority, the proposer/contractor shall request each employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate and that such employment agency, labor union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

- d. Except for construction contracts, prior to an award of a contract, the proposer shall submit to the Authority a staffing plan of the anticipated work force to be utilized on the contract or, when required, information on the contractor's total work force, including apprentices, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Authority. The information must be submitted on the Staffing Plan Form.
 - e. After the award of the contract, the contractor shall submit to the Authority a workforce utilization report, in a form and manner required by the Authority, of the work force actually utilized on the contract, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Authority.
 - f. The contractor shall include these provisions in every subcontract for work performed in connection with this contract in such manner that the requirements of these provisions will be binding on each subcontractor as to work in connection with the contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, and when requested, provide to the contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the contract.
3. Upon a written request, the MTA Department of Diversity and Civil Rights shall supply contractors with labor force availability data, for specific job titles that fall within the relevant occupational categories. Contractors may use this data to identify, recruit and retain minority group members and women for participation on this contract.
 4. The requirements of this paragraph shall not apply to any employment or application for employment outside New York State or solicitations or advertisements thereof, or any existing employment programs outside New York State.

Q. EEO SUBMISSION REQUIREMENTS

The successful proposer must submit to the Contract Manager, a, EEO-1 Form within seven calendar days after it receives verbal notification of the selection. All other proposers must submit the document within seven (7)

calendar days of a verbal request from the Contract Manager. The Contract Manager will confirm, in writing, any verbal notification. However, the time frame for proposer's response is based upon the date of the verbal notification. Upon written request, the Contract Manager may extend the deadline for submission of an EEO-1 Form. If a proposer does not submit an EEO-1 Form, the proposal may be disqualified unless reasonable justification for such failure is provided in writing or a commitment is made to provide such document by a date certain established by the Authority. Requirements of this section will also be binding on each subcontractor.

R. CONTRACTOR COMPLIANCE REPORTING

The MTA Department of Diversity and Civil Rights is responsible for determining compliance by the contractor with the EEO/nondiscrimination obligations and MBE/WBE goals established in the contract. The MTA Department of Diversity and Civil Rights may determine that the contractor is complying with the EEO/nondiscrimination obligations and MBE/WBE goals set forth in the MBE/WBE Utilization Plan (Form 15A.1) by examining reports received from a contractor, on-site inspections, progress meetings regarding work required by the contract, or other Authority actions taken in the ordinary course of administering the contract.

S. REPORTING AND RECORDKEEPING

1. The contractor shall submit to the Authority documentation concerning its performance in meeting the MBE/WBE goal during the term of the contract.
 - a. If the duration of this contract is less than one year, within sixty (60) days of the award date of this contract, unless extended by the Authority in writing, the contractor must enter into written subcontract agreement(s) with the MBE/WBEs listed in its MBE/WBE Utilization Plan (Form 15A.1) and accompanying Intent to Perform as a Subcontractor/Subconsultant (Form 15A.4) or with substitutes approved by the Authority.
 - b. If the duration of this contract is one (1) year or more, not later than thirty (30) days before a subcontractor commences work on the contract, unless extended by the Authority in writing, the contractor must enter into written subcontract agreement(s) with the MBE/WBEs listed in its MBE/WBE Utilization Plan (Form 15A.1) and accompanying Intent to Perform as a Subcontractor/Subconsultant (Form 1 5A.4) or with substitutes approved by the Authority.

- c. The contractor immediately upon execution shall provide a copy of the contractor's executed subcontract agreement(s) with MBE/WBEs to the Authority, with a duplicate copy sent to the MTA Department of Diversity and Civil Rights.
 - d. The contractor must submit updated subcontract agreements with MBE/WBEs any time a significant change to items of work, material, services, or subcontract value occurs.
2. The contractor must submit a work schedule outlining when each MBE/WBE subcontractor will commence and complete work on the contract.
 3. The contractor must submit monthly reports on progress toward meeting its MBE/WBE goal. The Monthly MBE/WBE Progress Reports (Form 15A.3), submitted with the contract documents, shall be mailed to the Project Manager with a copy to the MTA Department of Diversity and Civil Rights.
 4. The contractor must promptly notify the Project Manager of any situation in which any progress payment is not made to a MBE/WBE subcontractor or supplier within the time frames set forth in this contract. Nothing herein shall create any obligation on the part of the Authority to pay or to see to the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and materialman and the Authority.
 5. The contractor must promptly inform the Project Manager (with a copy to the Contract Manager), in writing, when it has reason to believe its attainment of the MBE/WBE participation goal is in jeopardy. In this regard, the contractor must inform the Project Manager (with a copy to the Contract Manager), in writing, with supporting documentation, immediately upon learning that a MBE/WBE firm is unable or unwilling to perform the subcontracted services.
 6. The willful making of false statements or the willful submission to MTA or the Authority of incorrect information shall be treated by the Authority as a breach of the contract.

T. WORKFORCE UTILIZATION REPORTS

1. Prior to the award of this contract the proposer shall submit an EEO Policy Statement and a staffing plan, as described in Section 143.3 of the

Regulations. Where the work force to be utilized in the contract cannot be separated out from the contractor's and/or subcontractor's total work force, the proposer shall submit to the Contract Manager, instead of the staffing plan, a report of contractor's and/or subcontractor's total work force, including apprentices, broken down by specified ethnic background, gender and Federal occupational categories. The information must be submitted on the Staffing Plan Form. A proposer's failure to submit an EEO Policy Statement and a staffing plan or total work force data shall result in the rejection of the proposal unless the proposer provides the Authority with a reasonable justification in writing for such failure or makes a commitment to submit an EEO Policy Statement and a staffing plan or work force data by a date certain established by the MTA Department of Diversity and Civil Rights.

2. After the award of a the contract, and where the work force to be utilized in the performance of the contract can be separated from the contractor's and/or subcontractor's total work force the contractor shall submit on a monthly basis, throughout the life of the contract, a workforce utilization report to the Project Manager, which details the number of employees that worked on activities related to this contract. For commodities, service/consulting and professional construction consultant contracts, the work force utilization report shall include the contractor's and subcontractor's work force on the contract broken down by ethnic background, gender and Federal occupational categories. For construction contracts, the work force utilization report shall include the hours a contractor's and subcontractor's employees worked on activities related to the contract and a break down of those hours by ethnic background, gender and the construction related job titles that fall within the relevant Federal occupational categories. For construction contracts the work force utilization reports shall be submitted on a monthly basis throughout the life of the contract. For all other contracts the contractor shall submit work force utilization reports on a quarterly basis throughout the life of the contract when the contractor's and/or subcontractors' work force changes. If the contractor's and/or subcontractor's work force does not change within the quarterly period, the contractor shall so notify the Authority. The information must be submitted on the appropriate MTA standard form WF-257. In instances where a contractor's/subcontractor's workforce cannot be broken out, the contractor/subcontractor must affirm such and submit an EEO-1 Form detailing its current workforce, on a semiannual basis throughout the life of the contract.
3. During the lifetime of the contract, the contractor shall undertake or continue existing EEO programs and shall ensure that all subcontractors comply with the EEO requirements.

U. COMPLAINT BY THE AUTHORITY AGAINST CONTRACTOR TO NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT – FAILURE TO COMPLY WITH THE MBE/WBE PROGRAM OR BAD FAITH, WILLFUL AND INTENTIONAL FAILURE TO COMPLY

In the event the Authority determines that the contractor has failed to comply with the State MBE/WBE Law, the Regulations or this contract, including that contractor has acted in bad faith or has willfully and intentionally failed to comply with the same and elects not to enforce its rights as set forth in Paragraph N, above, the Authority may file a complaint with the Director pursuant to Executive Law, Section 316, seeking specified remedies, which include, but are not limited to, the imposition of various sanctions, fines or penalties against the contractor. The procedure and requirements with respect to filing and resolving any such complaint are set forth in the Regulations. The contractor is hereby put on notice that the penalties imposed by the Director for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the contractor shall be ineligible to submit a proposal to any contracting State agency, which is defined in the State MBE/WBE Law and the Regulations to include any MTA Agency, and many other non-MTA agencies, or be awarded any State agency contract for a period not to exceed one (1) year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a proposal pursuant to applicable regulations, the penalties imposed for any subsequent violation, if such violation occurs within five (5) years of the first violation, may include a determination that the contractor shall be ineligible to submit a proposal to any contracting State agency or be awarded any State agency contract for a period not to exceed five (5) years following the final determination.

V. SUBSEQUENT RESPONSIBILITY DETERMINATIONS

The Authority may take into account information regarding a contractor's compliance with the MBE/WBE program requirements under this contract, including, but not limited to its failure to meet goals or to demonstrate good faith efforts to meet same, etc, as well as information of willful or intentional failures, fraud or intentional misrepresentations on the part of the contractor, as described in the State MBE/WBE Law and Regulations, in rendering determinations as to whether the contractor, having submitted a proposal in connection with future contract solicitations, should be found to be a responsible proposer, as required pursuant to Section 1209 or 1265-a, as applicable, of the Public Authorities Law.

W. PROHIBITION OF AGREEMENTS TO RESTRICT COMPETITION

Agreements between a proposer and a MBE/WBE firm in which the MBE/WBE firm agrees not to provide subcontracting quotations to any other proposers are prohibited.

CONTRACT NO. and TITLE: _____ CONTRACT VALUE \$ _____

AMOUNT OF TOTAL CONTRACT PRICE THAT IS ATTRIBUTABLE TO WORK PERFORMED IN NEW YORK STATE: \$ _____

MBE/WBE UTILIZATION PLAN FORM

(Form 15A.1)

INSTRUCTIONS: See Section IV, paragraph 6 of the Contract Documents

Name, Address, Telephone Number of MBE/WBE (including name of contact person, Federal I.D.# or Social Security Number)	Indicate if MBE or WBE	Description of Work, Products and/or Services to be provided	Agreed Dollar Amount of MBE/WBE Subcontract	MBE/WBE % of Work Performed in New York State	MBE/WBE Projected Start and Completion Date

The Proposer/Bidder is a corporation, partnership, or joint venture, this form must be signed respectively, by the president of the corporation, a general partner, or the president/general partner of one of the joint ventures. If it is signed by anyone else, you must include appropriate proof (such as certified copy of the by-laws, partnership agreement or joint venture agreement) which confirms that the person signing this form is authorized to do so. By signing below, the Proposer/Bidder authorizes the Authority to verify all information provided on this form.

PROPOSER/BIDDER: _____ AUTHORIZED SIGNATURE: _____ ADDRESS: _____

TELEPHONE NUMBER: _____

FEDERAL IDENTIFICATION NUMBER: _____ DATE: _____

**REQUEST FOR TOTAL OR PARTIAL WAIVER OF MBE/WBE GOAL(S)
PURSUANT TO MBE/WBE UTILIZATION PLAN FORM
(Form 15A.2)**

PROPOSER/BIDDER/CONTRACTOR: _____

Contract Number: _____ Total Contract Dollar Value: _____

A Proposer/Bidder/Contractor failing to achieve the MBE/WBE goal(s) as specified in the Contract Documents must submit this form (Request for Total or Partial Waiver MBE/WBE Goal(s) - Form 15A.2) and the documentation of good faith efforts specified in Part II of this form, at the time provided for the submission of the MBE/WBE Utilization Plan (Form 15A.1), or if the contract is already awarded, as soon as the Contractor realizes that it will not achieve a goal, or prior to final payment on the contract whichever is sooner.

PART I. REQUEST FOR WAIVER OF MBE/WBE GOAL(S)

INSTRUCTIONS: If the Proposer/Bidder/Contractor is requesting a total waiver of one or both goals, Section A must be completed. If the proposer/contractor is requesting a partial waiver of one or both goals, Section B must be completed. In requesting a partial waiver, the Proposer/Bidder/Contractor must specify MBE and/or WBE goal percentage(s) it is committed to achieving.

Section A - Total Waiver of MBE/WBE Goal(s)

_____, hereby request a total waiver of the:
(Name of Proposer/Bidder/Contractor)

(Check the appropriate box or boxes)

- G MBE goal as specified in the Contract Documents
- G WBE goal as specified in the Contract Documents

Section B - Partial Waiver of MBE/WBE Goals)

_____, hereby request a partial waiver of the:
(Name of Proposer/Bidder/Contractor)

(Check the appropriate box or boxes)

- G MBE goal as specified in the Contract Documents
 - G WBE goal as specified in the Contract Documents
- _____, commit to achieving an MBE goal of ____%.

(Name of Proposer/Bidder/Contractor)

(Name of Proposer/Bidder/Contractor)

, commit to achieving an WBE goal of ____%.

PART II. GOOD FAITH EFFORTS DOCUMENTATION

INSTRUCTIONS: A Proposer/Bidder/Contractor requesting a request for a total or partial waiver of MBE and/or WBE goal(s) must submit with this form, full and detail explanation and documentation which specifically identifies the Proposer/Bidder/Contractor's efforts to obtain MBE/WBE participation on this Authority contract.

The Proposer/Bidder/Contractor must provide the information and support documentation specified in Part II of this form (SEE REVERSE SIDE OF THIS FORM), and a their information if believes will assist the Authority in its review of the Request for Total or Partial Waiver of MBE/WBE Goal(s).

- 1) The names of general circulation, trade association and women-oriented publications in which bids were solicited for purposes of complying with goal requirements established for minority and women-owned business enterprise participation;
- 2) The dates bid solicitations for minority and women-owned business participation were published in any of the publications named pursuant to paragraph (1) and the text of the bid solicitations;
- 3) A list of minority and women-owned business enterprises appearing in the State Directory which were solicited in writing to provide bids for purposes of complying with the contract goal requirements for minority and women-owned business enterprise participation;
- 4) Proof of dates on which such solicitations were made in writing and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made of all minority and women-owned business enterprise;
- 5) Copies of responses made by minority and women-owned business enterprises to solicitations made by the contractor;
- 5) A description of any contract documents, plans, or specifications made available to minority and women-owned business enterprises for purposes of soliciting their bids, and the dates and manner in which these documents were made available;
- 7) Documentation of any negotiations between the contractor and minority and women-owned business enterprise participation;
- 3) A statement setting forth the contractor's basis for requesting a partial or total waiver.
- 3) Written discussion of the relevance of the following items to the contractor's request for a partial or total waiver of MBE/WBE contract goal(s) specified in the Contract Documents:
 - a) The number and types of minority or women-owned business enterprises located in the region in which the contract is to be performed;
 - b) The total dollar value of this contract;
 - c) The scope of work to be performed;
 - d) The project size;
 - e) The project term;
 - f) The availability of other business enterprises located in the region;
 - g) The financial ability of minority and women-owned business enterprises located outside the region to perform on the contract

MONTHLY MBE/WBE PARTICIPATION REPORT (Form 15A.3)

REPORT FOR MONTH ENDING

INSTRUCTIONS: After the award of a contract, this Form 15A.3 must be filed by the 15th of each month to report actual participation by NYS certified MBE/WBE firms during the preceding month.

Contract number: _____ Title: _____ Contract Value Amount (as amended) \$ _____
 NYS Work \$ _____

Contract Projected Start Date: _____ MBE Goal: _____ % Completion Date: _____ % Complete: _____ WBE Goal: _____ %

Total value of MBE subcontracts: \$ _____ Total value of WBE subcontracts: \$ _____
 Prime to date: \$ _____ MBE % of Prime contract (as amended): _____ WBE % of Prime contract (as amended): _____
 Total amount invoiced to date: \$ _____ Total MBE payments to date: \$ _____ Total of WBE payments to date: \$ _____
 amount of last payment to Prime: \$ _____ Total of MBE payments to date: \$ _____ Total of WBE payments to date: \$ _____
 date of last payment to Prime: \$ _____

Name of MBE/WBE Subcontractor and Description of Work Performed	Work Status this Report Active, Inactive or Complete	Subcontract Start Date	Projected Completion Date	% of Work Complete	Date & Amount of Payment for this Report	Total Payments to Date	Subcontract Amount (as amended)	Copy of M/WBE Subcontract Agreement filed with Authority (Yes or No)
	<input type="checkbox"/> Active _____ <input type="checkbox"/> Inactive _____ <input type="checkbox"/> Complete _____							
	<input type="checkbox"/> Active _____ <input type="checkbox"/> Inactive _____ <input type="checkbox"/> Complete _____							
	<input type="checkbox"/> Active _____ <input type="checkbox"/> Inactive _____ <input type="checkbox"/> Complete _____							
	<input type="checkbox"/> Active _____ <input type="checkbox"/> Inactive _____ <input type="checkbox"/> Complete _____							

NECESSARY: USE A SEPARATE SHEET

Did any of the M/WBE subcontractors rent/lease equipment from the prime contractor or an affiliate company during the report period? _____ YES _____ NO
 If yes, explain the arrangement, including a description of the equipment and the cost. _____
 Did any of the M/WBE subcontractors utilize employees or former employees of the prime contractor or an affiliate company during the report period? _____
 Did any of the M/WBE subcontractors subcontract any portion of its work to a non-M/WBE during the report period? If yes, explain fully. _____
 Has the scope of work or the subcontract amount for any of the M/WBE subcontractors changed since the last report? If yes, explain fully. _____
 By signing this form, the person individually and on the behalf of the Contractor represents to the Authority that the information contained herein is truthful, accurate, complete and not misleading.

AUTHORIZED SIGNATURE: _____ TITLE: _____ DATE: _____

- 0) Identify terms and conditions offered to minority and women-owned business enterprises, and compare how those subcontract terms and conditions compare to those offered in the ordinary course of the contractor's business and to other subcontractors of the contractor.
 - 1) Identify efforts made by the contractor to reasonably structure the contract scope of work for purposes of subcontracting with minority and women-owned enterprises.
 - 2) Identify actions taken to contact and assess the financial ability of minority and women-owned business enterprises located outside of the region in which the contractor's scope of work is to be performed; and
 - 3) Any other information determined relevant by the Authority (if and when requested) or the contractor.
- By signing this form, the person individually and on the behalf of the Proposer/Bidder/Contractor represents to the Authority that the information supplied to the Authority is truthful, accurate, complete and not misleading.

Authorized Signature: _____ Title: _____

Firm/Company Name: _____

Address: _____

Telephone Number: _____ Date: _____

Intent to Perform as Subcontractor/Subconsultant (FORM 15A.4)

CONTRACT NUMBER _____ CONTRACT TITLE _____

NAME OF PRIME BIDDER/PROPOSER _____

The undersigned intends to perform work in connection with the above project as (check one):

- A subcontractor
- A subconsultant
- A second tier subcontractor (if required to meet the goal)

Note: Pursuant to NYS Executive Law Article 15-A, MBE/WBE firms projected to participate in the MTA's MBE/WBE Program must be certified as a MBE/WBE by the Empire State Development Corporation (ESDC) in order for the firm's participation to be credited towards an MBE or WBE goal. Only firms certified by ESDC as a MBE or WBE can be utilized to meet an MBE or WBE goal.

CHECK THE APPLICABLE STATEMENT:

- The current MBE/WBE certification status of the proposed MBE/WBE has been confirmed by the Bidder/Proposer.
- The proposed MBE/WBE has submitted proof of its MBE/WBE certification to the Bidder/Proposer.

SUBCONTRACT AMOUNT \$ _____

The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project.

Note: If applicable, please indicate the amount and percentage of work you intend to subcontract out to other subcontractors/vendors and the name(s) of said known subcontractors/vendors (both MBE/WBE and non-MBE/WBE firms):

The undersigned intends to enter into a formal agreement for the above work with the named bidder/proposer conditioned upon the named bidder's/proposer's being awarded contract by the MTA or any of its affiliated agencies.

By _____ Name & Title of Authorized Signatory _____ Signature of Authorized Representative _____ Date _____
Please Type or Print

WORK FORCE UTILIZATION REPORT SERVICE and/or CONSULTANT FIRMS

Agency _____ Code _____

Reporting Period _____

Check one: Quarterly Report Semi-Annual Report

Contractor Firm Name _____ Address _____ City _____ State _____ Zip _____

Type of Report: Contract Specific Work Force Total Work Force NOT-FOR-PROFIT

Federal Id/P ayee Id No. _____ Contract No.: _____ Location of Work: _____ County _____ Zip _____

Check One: Prime Contractor Subcontractor Product/Service Provided: _____

Contract Amount: \$ _____ Contract Start Date: _____ Percent of Job Completed _____

Federal Occupational Category	Total Number of Employees		Black (No. of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native		Total Percent Minority Employees	Total Percent Female Employees
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Official's Name _____ Title _____

Company Official's Signature _____ Date _____

Telephone Number (____) _____

SFCNWK (399)

Service and/or Construction

MONTHLY WORK FORCE UTILIZATION REPORT - FORM WF-257 - CONSTRUCTION

Agency _____ /Code _____
 Reporting Period _____
 Contractor Firm Name _____ Address _____ City _____ State _____ ZIP _____

Federal Id/Payee Id No. _____	Contract No. _____	Location of Work _____	County _____	ZIP _____
Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor	Contract Start Date: _____		Percent of Job Completed _____	
Contract Amount: \$ _____				

Job or Trade Category	**	Total Hours Worked During Reporting Period												Total Number of Employees		Total Number of Minority Employees			
		Total Hours Worked All Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native		Minority &	Female &						
		M	F	M	F	M	F	M	F	M	F			M	F	M	F		
Field Office Staff:																			
Professionals																			
Office/Clerical																			
Laborers	F																		
	J																		
	A																		
Equipment Operators	F																		
	J																		
	A																		
Surveyors	F																		
	J																		
	A																		
Truck Drivers	F																		
	J																		
	A																		
Iron Workers	F																		
	J																		
	A																		
Carpenters	F																		
	J																		
	A																		
Cement Masons	F																		
	J																		
	A																		
Painters	F																		
	J																		
	A																		
Electricians	F																		
	J																		
	A																		
Plumbers	F																		
	J																		
	A																		
Other:	F																		
	J																		
	A																		
GRAND TOTALS																			

Company Official's Name _____
 Title _____
 Company Official's Signature _____
 Date _____
 Telephone Number (_____) _____

METROPOLITAN TRANSPORTATION AUTHORITY AFFIRMATIVE ACTION

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT EEO-1

Section A - TYPE OF REPORT

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX.)

- | | |
|---|---|
| (1) <input type="checkbox"/> Single-establishment Employer Report | Multi-establishment Employer:
(2) <input type="checkbox"/> Consolidated Report (Required)
(3) <input type="checkbox"/> Headquarters Unit Report (Required)
(4) <input type="checkbox"/> Individual Establishment Report (submit one for each establishment with 50 or more employees)
(5) <input type="checkbox"/> Special Report |
|---|---|

2. Total number of reports being filed by this Company (Answer on Consolidated Report only)

SECTION B -- COMPANY IDENTIFICATION (To be answered by all employers)

Office
Use
Only

1. Parent Company

a. Name of parent company (owns or controls establishment in item 2) omit if same as above

Address (Number and street)

City or town

State

ZIP code

2. Establishment for which this report is filed. (Omit if same as above)

a. Name of establishment

Address (Number and street)

City or Town

County

State

ZIP code

b. Employer Identification No. (IRS 9-DIGIT TAX NUMBER)

c. Was an EEO-1 report filed for this establishment last year?

YES NO

METROPOLITAN TRANSPORTATION AUTHORITY AFFIRMATIVE ACTION

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT EEO-1

Section C - EMPLOYMENT DATA

Page 2

Employment at this establishment-Report all permanent full-time and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank Spaces will be considered as zeros.

Job Categories	NUMBER OF EMPLOYEES										
	Overall Totals (Sum of Col. B thru K) A	MALE					FEMALE				
		White (Not of Hispanic Origin) B	Black (Not of Hispanic Origin) C	Hispanic D	Asian or Pacific Islander E	American Indian or Alaskan Native F	White (Not of Hispanic Origin) G	Black (Not of Hispanic Origin) H	Hispanic I	Asian or Pacific Islander J	American Indian or Alaskan Native K
Officials and Managers -1											
Professionals -2											
Technicians -3											
Sale Workers -4											
Office and Clerical -5											
Craft Workers (Skilled) -6											
Operatives (Semi-Skilled) -7											
Laborers (Unskilled) -8											
Service Workers-9											
TOTAL -10											
Total employment reported in previous EEO-1 report 11											

NOTE: Omit questions 1 and 2 on the Consolidated Report.

1. Date(s) of payroll period used: ____ 2. Does this establishment employ apprentices?
 1 Yes 2 No

METROPOLITAN TRANSPORTATION AUTHORITY AFFIRMATIVE ACTION

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT EEO-1

Page 3

Section D - ESTABLISHMENT INFORMATION (Omit on the Consolidated Report)

1. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity).

OFFICE
USE
ONLY

g.

Section E-REMARKS

Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units and other pertinent information.

Section F-CERTIFICATION

- Check 1 All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)
 one 2 This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official	Title	Signature	Date
Name of person of contact regarding this report (type or print)	Address (Number and Street)		
Title	City and State	ZIP Code	Telephone Number (Including Area Code)

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII.
 WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001.

STAFFING PLAN

Project/RFP Title: _____

Location of Contract: _____ County _____ ZIP _____

Contractor/Firm Name _____ Address _____ City _____ State _____ ZIP _____

Check applicable categories:

- (1) Staff Estimates include: Contract/Project Staff Total Work Force Subcontractors

- (2) Type of Contract: Construction Consultants Commodities Services/Consultants

Total Anticipated Work Force												
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native		Total Percent Minority Employees	Total Percent Female Employees
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Official's Name _____ Title _____

Company Official's Signature _____ Date _____

Telephone Number (____) _____

Appendix E

TRIBOROUGH BRIDGE & TUNNEL AUTHORITY

INSURANCE REQUIREMENTS

FOR

CONTRACT

A. The Consultant shall provide insurance in the following types and amounts, as indicated by the checked box:

<u>INSURANCE</u>	<u>AMOUNTS</u>
<input checked="" type="checkbox"/> Workers' Compensation, including Employer's Liability	\$ 2,000,000
<input type="checkbox"/> Longshore & Harborworkers' Endorsement	
<input type="checkbox"/> Maritime Coverage Endorsement (Jones Act)	
<input checked="" type="checkbox"/> Commercial General Liability	\$ 3,000,000 Per Occurrence
<input checked="" type="checkbox"/> Business Automobile Liability	\$ 2,000,000 Per Accident
<input type="checkbox"/> Contractor's Pollution Liability	\$
<input type="checkbox"/> Pollution Legal Liability	\$
<input type="checkbox"/> Marine Protection & Indemnity Liability	\$
<input type="checkbox"/> Builder's Risk/Installation Floater	\$
<input checked="" type="checkbox"/> Professional Liability	\$ 2,000,000 Per Occurrence
<input type="checkbox"/> Professional Liability, including pollution liability	\$
<input checked="" type="checkbox"/> Valuable Papers	\$
<input type="checkbox"/> Property Insurance	\$
<input type="checkbox"/> Crime	\$
<input type="checkbox"/> Self Insurance	\$
<input type="checkbox"/> Railroad Protective Liability	\$
<input type="checkbox"/> Garage Liability & Garage Keepers Legal Liability	\$
<input type="checkbox"/> Other: _____	\$
<input type="checkbox"/> Other: _____	\$
<input type="checkbox"/> Other: _____	\$

B. **Required Insurance** Except as otherwise provided in this Appendix and/or the Specifications, the Consultant shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Agreement, through FINAL COMPLETION, policies of insurance as herein below set forth, written by companies with an A.M. Best Company rating of A-/"VII" or better, and approved by the Authority and shall deliver evidence of such policies. These policies must: (i) be written in accordance with the requirements of the paragraphs below, as applicable; (ii) be endorsed in form acceptable to include a provision that the policy will not be canceled, materially changed, or not renewed, unless at least thirty (30) days prior written notice to the Authority c/o MTA Risk and Insurance Management Department - Standards, Enforcement & Claims Unit, 2 Broadway - 21st floor, New York, NY 10004; and (iii) state or be endorsed to provide that the coverage afforded under the Consultant's policies shall apply on a primary and not on an excess or contributing basis with any policies which may be available to the Authority/MTA, and also that the Consultant's policies, primary and excess, must be exhausted before implicating any Authority/MTA policy available. [Except for Professional Liability, policies written on claims made basis are not acceptable.] (iv) In addition, Consultant's policies shall state or be endorsed to provide that, if a Subconsultant's policy contains any provision that may adversely affect whether Consultant's policies are primary and must be exhausted before implicating any Authority/MTA policy available, Consultant's and Subconsultant's policies shall nevertheless be primary and must be exhausted before implicating

any Authority/MTA policy available. Except as otherwise provided herein, policies written on a "claims-made" basis are not acceptable. At least two (2) weeks prior to the expiration of the policies, Consultant shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies. Except as otherwise indicated in the detailed coverage paragraphs below, self-insured retentions and policy deductibles shall not exceed \$100,000, unless such increased deductible or retention is first approved by the Authority. The Consultant shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss. The insurance monetary limits required herein may be met through the combined use of the insured's primary and umbrella/excess policies.

1. **Workers' Compensation Insurance** (including Employer's Liability Insurance with limits of not less than \$2,000,000 which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of New York State. The policy shall be endorsed to include Longshore and Harbor Workers' Compensation and/or Maritime Coverage(s), when applicable.
 - a. **Longshore & Harborworkers' Compensation Act Endorsement** - When work will be performed on or over navigable waterways, a Longshore and Harbor Workers Endorsement shall be provided to cover the employees for wages, transportation, maintenance and cure, in accordance with applicable laws.
 - b. **Maritime Coverage Endorsement (Jones Act)** - When operations are to be performed upon navigable waterways and barges, Tug Boats, and all other vessels on the ocean and all intra-coastal rivers and canals, as well as drivers, divers, and underwater personnel are utilized, a Maritime Coverage Endorsement shall be provided to cover the seamen, masters and members of a crew in accordance with applicable laws, providing remedy for damage to injury in this course of employment.
2. **Commercial General Liability Insurance** (I.S.O. 2001 Form or equivalent approved by the Authority in the Consultant's name with limits of liability specifically written for this contract in the amount of at least the amount set forth in Paragraph A above, each occurrence/\$3,000,000 General Aggregate Limit (other than products-completed operations)/\$3,000,000 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any Authority/MTA policy available. Such policy should be written on an occurrence form, and shall include:
 - Contractual coverage for liability assumed by the Consultant under this agreement;
 - Personal and Advertising Injury Coverage;
 - Products-Completed Operations extending at least one year after project completion;
 - Independent Contractors Coverage;

- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Additional Insured Endorsement (I.S.O. Form CG 20 10 1185 version or equivalent approved by the Authority naming Triborough Bridge and Tunnel Authority (TBTA), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and the State of New York.

- **2 Broadway Agreements (work performed at 2 Broadway, NYC)**

In addition to the above Indemnitees, include the following as "Additional Insureds" when work under the Contract includes construction at, or the use of, the loading dock at 2 Broadway, New York, New York: New York City Transit Authority (NYCT), Metro North Commuter Railroad Company (MNR), Long Island Rail Road (LIRR), MTA Capital Construction Co., United States Trust Company of New York as Trustee under the 2 Broadway Ground Lease Trust, Two Broadway LLC, ZAR Realty, Colliers ABR, Inc., Colliers ABR Payroll Company, Inc. and the City of New York (as Owner)

3. **Business Automobile Liability Insurance Policy** (I.S.O. Form CA 00 01 10 01) or equivalent approved by the Authority) if vehicle enters Agency's property or is used as part of service provided, in the Consultant's name with limits of liability of at least \$2,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.
 - If the Project involves transporting and/or disposing of any hazardous material or waste off of the jobsite, the Contractor or any Subcontractor performing such work must add the MCS-90 to the automobile policy. The CA9948 endorsement is also required if transporting to a site outside of New York State. **(Additional pollution liability insurances may be required, which are identified in below paragraphs.)**
 - The policy limits of liability must be increased to at least \$5,000,000 each occurrence pursuant to federal, state or local laws, rules and regulations, and
 - Copies of the MCS-90 and CA9948 endorsements, if applicable, shall be provided for review as part of the insurance submission.
4. **Professional Liability Insurance** covering actual or alleged acts, errors or omissions committed by the Consultant, its agents or employees, arising out of the performance of this Agreement. The policy coverage shall also extend to include personal injury, bodily injury and property damage from the performance of professional service and/or arising out of the Work. The policy shall have limits of liability of at least \$2,000,000 per occurrence. If any deductible or self-insured retention is applicable, such deductible or self-insured retention shall not exceed \$250,000, unless approved by the Authority. The Consultant shall be responsible for all claims expenses and loss payments within the policy deductible or self-insurance retention.

If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. Such insurance shall be subject to the terms and

conditions and exclusions that are usual and customary for this type of insurance. Said policy shall be endorsed in form acceptable to include a provision that the policy will not be canceled, not renewed, or the limit of liability reduced by endorsement without at least thirty (30) days prior written notice to the Triborough Bridge and Tunnel Authority c/o MTA Risk and Insurance Management Department – Standards, Enforcement & Claims Unit, 2 Broadway – 21st floor, New York, NY 10004.

If this insurance is provided on a claims-made basis, the Consultant shall maintain continuous insurance coverage during the term of this Contract and in addition to the coverage requirements above, such policy shall provide that:

- i. Policy retroactive date coincides with or precedes the insured's initial services under the Agreement and shall continue until the termination of the Agreement (including subsequent policies purchased as renewals or replacements);
- ii. Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- iii. Not less than a one year extended reporting period with respect to events which occurred but were not reported during the term of the policy or ongoing coverage is maintained.

5. **Valuable Papers and Records** at cost to repair or replace with like kind and quality including the cost of gathering and/or assembling information, subject to a minimum limit of liability of \$500,000. The Authority and the MTA shall be named as loss payees as their interests may appear and all rights of subrogation against the Authority and the MTA, their agents or assigns shall be waived. Valuable Papers Insurance, when required, shall be kept in force until final delivery of contract documents

6. Extract or insert any other insurance language required here and number accordingly. If no additional insurance is required, delete this paragraph.

7. Consultant shall provide any additional insurance policies not stated herein that are necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the Work.

C. The Consultant shall furnish to the Authority at the following address evidence of all policies before any work is started to Triborough Bridge and Tunnel Authority:

c/o MTA Risk & Insurance Management
Standards, Enforcement & Claims Unit
2 Broadway – 21st Floor
New York, NY 10004

Certificates of Insurance may be supplied as evidence of such aforementioned policies; however, if requested by the Authority, the Consultant shall deliver to the Authority within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (1) be provided on the Authority Certificate of Insurance Form or MTA Certificate of Insurance Form for Joint

Agency Agreements, as applicable; (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (3) disclose any deductible, sub-limit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds and Named Insureds as required herein. The *Consultant must provide a physical copy of the Additional Insured Endorsement (I.S.O. Form CG 20 10 1185 version or equivalent, as applicable and the endorsement(s) must include policy number(s)*; (5) reference the Contract by number on the face of the certificate; and (6) expressly reference the inclusion of all required endorsements.

- D. **No Limit on Licensee's Liability** Nothing herein contained shall be deemed to limit the Consultant's liability to the limits of liability, or coverage of Policies in Section B above, their renewals, or replacement.
- E. **Notice of Occurrence** The Consultant shall file the following with the Metropolitan Transportation Authority Risk and Insurance Management Department, Attention: Assistant Director Claims Oversight, 347 Madison Avenue, 341-18, New York, New York 10017 (with a copy to the Engineer): (1) a notice of any occurrence likely to result in a claim against the Authority, which shall be filed immediately; and (2) a detailed, sworn proof of interest and loss, which shall be filed within sixty (60) days from the date of loss.
- F. **Insurance Not in Effect** If, at any time during the period of this Contract, insurance as required is not in effect, or proof thereof is not provided to the Authority, the Authority shall have the option to: (i) direct the Consultant to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an Event of Default.

Appendix F

Iran Divestment Act - Certification

Pursuant to New York State Finance Law § 165-a, Iran Divestment Act of 2012, the Office of General Services is required to post on its web site a list of persons who have been determined to engage in investment activities in Iran (the "Prohibited Entities List"), as defined in that Act. Under Public Authorities Law § 2879-c, Iranian Energy Sector Divestment, the Authority may not enter into or award a Contract unless it obtains a certification from a Bidder or Proposer that it is not on the Prohibited Entities List.

For purposes of this provision, a person engages in investment activities in Iran if: (A) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or (B) the person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran.

Bidder/Proposer Hereby Certifies it is not on the Prohibited Entities List:

Each person [as defined in paragraph (e) of subdivision one of section one hundred sixty-five-a of the state finance law where person means natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group] and each person signing on behalf of any other party, certifies, and in the case of a joint bid or proposal or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

Bidder/Proposer is Unable to Certify (additional document is required):

In the event a Bidder or Proposer is unable to certify that it is not on the Prohibited Entities List, it must supply a signed statement with its Bid or Proposal setting forth in detail the reasons therefor.

Such statements will be evaluated on a case-by-case basis and the Authority may enter into a contract with a Bidder or Proposer if it is able to demonstrate that: a) its investment activities in Iran were made before April 12, 2012; b) its investment activities in Iran have not been expanded or renewed after April 12, 2012; and c) it has adopted, publicized and is implementing a formal plan to cease its investment activities in Iran and to refrain from engaging in any new investments in Iran.

Full Legal Name of Certifying Entity: _____

Name of Person Executing Certification: _____

Title of Person Executing Certification: _____

TS-1
Scope of Services

TS-2

FEE SCHEDULE

Paralegal: \$_____ Per Hour

RFP _____

INFORMATION TO BE FURNISHED BY A PROPOSER
(Note: For purposes of this questionnaire, the term "Consultant" refers both to a proposer and to the firm awarded the contract)

- I. Identity of consultant ("Consultant"): _____
- A. Consultant's Full Legal Name: _____
- B. Consultant's form of legal entity (corporation, partnership, joint venture, sole proprietorship, etc.)

- C. State or country under whose laws Consultant is organized: _____
- D. Consultant's federal taxpayer identification number: _____
- E. Consultant's mailing address: _____

- F. Consultant's street address (complete only if different than "E") _____

G. Pursuant to Public Authorities Law §2879 (5) (d) The Triborough Bridge and Tunnel Authority may not enter into a contract with a "foreign business enterprise", as defined in New York State's Public Authorities Law §2879 (5), which has its principal place of business located in a "discriminatory jurisdiction", as defined in New York State's Public Authorities Law §2879 (5), contained on the list prepared by the Commissioner of Economic Development. The following states are included on the list of discriminatory jurisdictions: Alaska, Hawaii, Louisiana, South Carolina, West Virginia, and Wyoming.

The following questions pertaining to New York State's Public Authorities Law §2879 (5) (d) will be answered by the proposer. In the event that additional information is required, the Authority reserves the right to inquire further with respect to the responses provided to questions (a) and (b) below.

Instructions to Proposer: If the proposal is for construction services, the proposer will answer only question (b). If the proposal is not for construction services, the proposer will answer both questions (a) and (b).

“Construction services” shall mean the acquisition, erection, building, alteration, repair, improvement, increase, enlargement, extension, installation, reconstruction, renovation or rehabilitation of a project; and the engineering, consulting, architectural, legal, fiscal and economic and environmental investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto and claims arising therefrom.

(Contract Manager - check applicable space)

This proposal is _____ / is not _____ for “construction services”, as defined above.

- (a) Is the commodity substantially produced, or is the service substantially performed in New York?

(A commodity is substantially produced and a service is substantially performed in New York State if 51% or more of the value of the commodity or service is produced, assembled or performed in New York State.)

YES | | NO | | Not Certain | |

- (b) Where is the proposer’s “principal place of business” located?

(Principal place of business is generally considered to be the enterprise’s main office, where the regular meeting of its board of directors occur, and where the company’s business is managed, conducted and directed, regardless of where the administrative departments or the physical property of the business is located.)

H. Statement of non-collusion as required by Section 2878 of the Public Authorities Law:

1. By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- (a) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;

- (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
- (c) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

2. A proposal shall not be considered for award nor shall any award be made where 1 (a), (b), and (c) above have not been complied with; provided however, that if in any case the proposer cannot make the foregoing certification, the proposer shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefor. Where 1 (a), (b), and (c) above have not been complied with, the proposal shall not be considered for award nor shall any award be made unless the Chief Procurement Officer of the Authority, or designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a proposer (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices being proposed, does not constitute, without more, a disclosure within the meaning of paragraph 1 (a) herein.

I. Certification of Compliance with the Metropolitan Transportation Authority Vendor Code of Ethics

Consistent with the terms of the MTA Vendor Code of Ethics (the "Code"), which are incorporated herein by reference, the Proposer, by signing the Proposal, certifies that during the course of this Solicitation and any resultant Contract:

- (a) the Proposer has notice of all of the terms of the Code;
- (b) no Gift, as defined by the Code, has been or will be offered to the Authority in connection with this Solicitation or any resultant contract;
- (c) no conflicts of interest exist or will exist;
- (d) all officers and personnel of the Proposer who have interacted or will interact with the Authority have been or will be provided a copy of the Code; and

- (e) the Proposer will obtain certifications similar to those made herein from all of its lower tier subcontractors, subconsultants and suppliers that the Proposer engaged or are being solicited for work under any contract resulting from this procurement. Receipt and retention of these lower tier certifications shall be subject to audit by the Authority.

Proposer must sign here: _____

VERIFICATION AND ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

On the ____ day of _____ 2012, before me personally came and appeared _____ by me known to be said person, who swore under oath as follows:

1. He/she is _____ of _____.
(Print title) (Print name of firm)
2. He/she is duly authorized to sign this questionnaire on behalf of said firm and duly signed this document pursuant to said authorization.
3. The answers to the questions set forth in this questionnaire are true, accurate and complete and were made to induce the award of this contract.
4. He/she acknowledged and understands that the questionnaire includes provisions which are deemed included in the contract if awarded to the firm.

Sworn to before me the ____ day of _____, 2012

Notary's stamp and signature _____

TS-4 Supplement (Lobby Law)

COMPLIANCE WITH NEW YORK STATE FINANCE LAW SECTIONS 139-j and 139-k

NEW YORK STATE FINANCE LAW SECTION 139-j – RESTRICTIONS ON CONTACTS DURING THE PROCUREMENT PROCESS

Effective January 1, 2006, all procurements by the Authority in excess of \$15,000 annually, are subject to the requirements of Sections 139-j and 139-k of the New York State Finance Law.

Section 139-j of the State Finance Law restricts the extent and nature of contacts that bidders/proposers (a/k/a “offerers”) may make or initiate with the Authority concerning a procurement while that procurement is pending. Section 139-j, subdivision 3 of the State Finance Law requires that offerers shall make only permissible contacts (defined as oral, written or electronic communications with the Authority intended to influence an procurement) with the Authority concerning a procurement, by contacting the designated point of contact only, except in certain designated cases including the submission of written proposals in response to a solicitation, submission of written questions to the designated contact person when all such written questions and responses thereto are to be disseminated to all other offerers who have expressed interest in the procurement, or communications related to contract negotiations after being notified of the tentative award of a procurement.

Section 139-j, subdivision 6 of the State Finance Law requires that the Authority incorporate a summary of the policy concerning permissible contacts during procurements into all solicitations of proposals or bid documents or specifications for procurement contracts subject to the requirements of Sections 139-j and 139-k of the State Finance Law. Further, the Authority is required to obtain written affirmations from all offerers that they understand and agree to comply with the policy relative to permissible contacts during a governmental procurement.

Section 139-j, subdivision 8 of the State Finance Law requires that members, officers and employees of the Authority report violations of the policy regarding permissible contacts by offerers to the appropriate official responsible for reviewing or investigating such matters. A finding that an offerer knowingly and willingly violated the requirements of Section 139-j may result in a determination of non-responsibility, thereby making the offerer and its subsidiaries, affiliates and related entities ineligible for award of the contract. Subsequent determinations of non-responsibility based upon a violation of Section 139-j of the State Finance Law will result in the offerer being ineligible to submit a bid or proposal on any future procurement contract for a period of four (4) years. Finally, the Authority is required to notify the New York State Office of General Services (“OGS”) of any determinations of non-responsibility or debarments due to violations of Section 139-j of the State Finance Law which, in turn, will be listed by OGS.

TS-4 Supplement (Lobby Law)

**NEW YORK STATE FINANCE LAW SECTION 139-k –
DISCLOSURE OF CONTACTS AND PRIOR NON-REPONSIBILITY
DETERMINATIONS**

Section 139-k, subdivision 2 of the State Finance Law requires that the Authority obtain specific information from offerers concerning prior non-responsibility determinations due to either (a) a violation of the requirements of State Finance Law Section 139-j or (b) an offerer's having intentionally provided false or incomplete information to a governmental entity. Section 139-k, subdivision 3 of the State Finance Law further requires that, in determining the responsibility of an offerer, the Authority must consider whether that offerer has failed to disclose accurate or complete information concerning prior non-responsibility determinations as required by Section 139-k, subdivision 2 of the State Finance Law. Further, except under certain circumstances, the Authority may not award any procurement contract to any offerer that fails to timely disclose accurate or complete information as required under Section 139-k, subdivision 2 of the State Finance Law.

**THE REQUISITE BIDDER'S/PROPOSER'S AFFIRMATION AND
CERTIFICATION OF COMPLIANCE WITH THE POLICY REGARDING
PERMISSIBLE CONTACTS AND DISCLOSURE OF PRIOR NON-
RESPONSIBILITY DETERMINATIONS ARE ANNEXED**

TS-4 Supplement (Lobby Law)

DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Name of Bidder/Proposer: _____

Address: _____

Name and Title of Person Submitting this Form: _____
(Please circle)

Has any governmental entity* made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years? No Yes

If yes: Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j? No Yes

Was the basis for the finding of Bidder's/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? No Yes

If yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Year of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

Has any governmental entity terminated a procurement contract with the Bidder/Proposer due to the intentional provision of false or incomplete information? No Yes

* A "governmental entity" is: (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)

TS-4 Supplement (Lobby Law)

BIDDER'S/PROPOSER'S AFFIRMATION AND CERTIFICATION

By signing below, the Bidder/Proposer:

- a) Affirms that the Bidder/Proposer Understands and agrees to comply with the policy regarding permissible contacts in accordance with State Finance Law Sections 139-j and 139-k of New York State.
- b) Certified that all information provided to the Authority with respect to State Finance Law §139-j and §139-k is complete, true and accurate.

By: _____
(Signature of Person Certifying)

Date: _____

Print Name: _____

Print Title: _____

Bidder/Proposer or
Contractor/Consultant: _____
(Full Legal Name)

Address: _____

Business
Telephone Number: _____

THE AUTHORITY'S RIGHT TO TERMINATE

The Authority reserves the right to terminate a Contract in the event it is found that the certification filed by the Contractor/Consultant, as Bidder/Proposer, in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor/Consultant in accordance with the written notification terms of the Contract.

TS-6

Contractor Responsibility Form

Solicitation No. _____

TS-6
METROPOLITAN TRANSPORTATION AUTHORITY
CONTRACTOR RESPONSIBILITY FORM
INSTRUCTIONS¹

1. Who should complete and sign the Contractor Responsibility Form? This form must be completed for all contracts of \$250,000 or greater. In addition, contractors and known subcontractors in contracts involving "Special Circumstances" must complete this form. "Special Circumstances" are defined herein as contracts or subcontracts in excess of \$100,000 in the following areas: painting; scrap; hazardous materials; concrete; lead; asbestos; inspection and testing; security-related projects; carting; and textiles and garments; or such area the Authority may designate from time to time. In addition, all known subcontractors having subcontracts in excess of \$1 million must complete this form. The person who completes the Contractor Responsibility Form on behalf of the submitting contractor or subcontractor must provide his/her title, telephone/fax number and e-mail address in Part II of the questionnaire. The person who signs the questionnaire on behalf of the submitting contractor or subcontractor should be either Chief Executive, Executive Director, Chief Administrator, President, Vice President, Treasurer, Secretary, Chair of the Board of Directors, or the principal owner or officer responsible for administering the submitting contractor's contract.
2. Reserved
3. For purposes of this questionnaire, the terms "Contractor," "bidder," and "bidder/proposer" refer to both a bidder/proposer and to the firm to be awarded the contract, as well as Contractors seeking subcontracts for \$1 million and more, or Contractors seeking contracts or subcontracts in special circumstances of \$100,000 or more. All of the questions refer to the firm awarded the contract, with the exception of the questions in Parts III.C. and IV, which include separate instructions.
4. For all questions, matters on appeal must be disclosed.
5. Unless otherwise noted, all questions relate to the previous ten (10) years.

¹ PERSONAL PRIVACY PROTECTION LAW NOTIFICATION

The information the Contractor is providing on this application, including information about Key People, is requested pursuant to the New York State Public Authorities Law for the purposes of determining the Applicant Firm's responsibility for a contract award. Failure to provide the specified information and authorization requested may, in the sole discretion of the MTA, prevent your firm's award of a contract by the MTA and/or its agencies. The information will be kept in a file maintained by MTA and its agencies or other files maintained under the authority of MTA and its agencies. Information which, because of any name, number, symbol, mark or other identifier, can be used to identify a person, shall be received, maintained and used by the MTA and its agencies solely for the above-stated purposes and will be protected from public disclosure to the fullest extent permitted by law.

Standard RFP
(Rev. 10/1/12)

6. All questions on this questionnaire must be answered; do not leave blanks. Where appropriate, state "None" or "Not Applicable" (N/A).
7. If additional space is required to fully respond to any question, please add sheets to this questionnaire and reference the question/answer appropriately.
8. This form includes:
 - a. Contractor representations and obligations (Part III) which (a) apply to Contractor's bid/proposal; and (b) are deemed incorporated into the contract between the Contractor and Authority if the contract is awarded to Contractor. If any representation is not accurate and complete at the time Contractor signs this form, Contractor must, as part of its bid, identify the provision and explain the reason in detail on a separate sheet, as provided in Part III; and
 - b. Questions which Contractor must answer as part of its bid/proposal (Parts III. C, IV, and V).
9. If during the performance of this Contract, either of the following occurs, Contractor shall promptly give notice in writing of the situation to the Authority's Chief Procurement Officer, and thereafter cooperate with the Authority's review and investigation of such information.
 - a. Contractor has reason to believe that any representation or answer to any question contained in this Contractor Responsibility Form was not accurate or complete at the time Contractor Responsibility Form was signed; or
 - b. Events occur or circumstances change so that an answer to any question on this Form is no longer accurate or complete.
10. In the Authority's sole discretion, the following shall constitute grounds for the Authority to take remedial action up to and including immediate termination of the Contract for convenience without payment for profit and overhead for work not performed if:
 - a. Contractor fails to notify the Chief Procurement Officer as required by "9" above;
 - b. Contractor fails to cooperate with the Authority's request for additional information as required by "9" above;
 - c. Contractor, a Contractor director, officer, principal, managerial employee, or owner of a 10% or more interest in Contractor, is convicted of a crime involving a public contract; or

- d. Significant concerns about the Contractor's integrity are raised based upon an evaluation of the events underlying any other determination, indictment, conviction, or other allegation that Contractor or a Contractor director, officer, principal, managerial employee, or owner of a 10% or more interest in Contractor, or has been involved in any felony or a misdemeanor related to truthfulness and/or business conduct in the past ten (10) years.
11. The Authority reserves the right to inquire further with respect to Contractor's responses; and Contractor consents to such further inquiry and agrees to furnish all relevant documents and information as requested by the Authority. Any response to this document prior or subsequent to Contractor's bid or proposal which is or may be construed as unfavorable to Contractor will not necessarily automatically result in a negative finding on the question of Contractor's responsibility or a decision to terminate the Contract if it is awarded to Contractor.
12. Definitions:
- a. Affiliate: An entity in which the parent of the submitting contractor owns more than fifty (50) % of the voting stock and/or an entity in which a group of principal owners or officers that owns more than fifty (50) % of the submitting contractor also owns more than fifty (50) % of the voting stock.
- b. Authority: refers to the MTA and/or MTA subsidiary or affiliate to which the Contractor is submitting its bid or proposal and/or which is awarding the contract sought.
- c. Control: The submitting contractor is controlled by another entity when: (1) the other entity holds ten (10) % or more of the voting stock of the submitting contractor; or (2) the other entity directs or has the right to direct daily operations. The submitting contractor controls another entity when: (1) it holds ten (10) % or more of the voting stock of the other entity; or (2) it directs or has the right to direct daily operations.
- d. Government agency(ies): include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations, public benefit corporations and local development corporations.
- e. Integrity Monitor: includes an Independent Private Sector Inspector General ("IPSIG"), or any independent private sector firm with legal, audit, investigative and loss prevention skills, employed by an organization or government entity, either voluntarily or by compulsory process, to monitor an entity's business activities to ensure compliance

with relevant laws and regulations, as well as to uncover and report unethical or illegal conduct within and against the entity.

- f. Joint Venture: a business undertaking by two or more persons, corporations or other legal entities engaged in a single defined project. The necessary elements are: (1) an express or implied agreement; (2) a common purpose the group intends to carry out; and (3) shared profits and losses.
- g. Managerial employees or managerial capacity: Employees in a supervisory capacity who, either by virtue of their title or their duties, operate with discretion over solicitation, letting, or management of contracts with public agencies.
- h. Metropolitan Transportation Authority (“MTA”) subsidiary or affiliate includes: New York City Transit Authority (“NYCT”), Manhattan and Bronx Surface Transit Operating Authority (“MaBSTOA”), Staten Island Rapid Transit Operating Authority (“SIRTOA”), Triborough Bridge and Tunnel Authority (“TBTA”), Metro-North Commuter Railroad Company (“MNCR”), Long Island Rail Road (“LIRR”), Metropolitan Suburban Bus Authority (“MSBA”), MTA Bus Company (“MTA BC”), MTA Capital Construction (“MTACC”) and First Mutual Transportation Assurance Company (“FMTAC”).
- i. Officer: Any individual who serves as or performs the functions of chief executive officer, chief financial officer, or chief operating officer of the submitting contractor, without regard to such individual’s title. president, vice president, secretary, treasurer, board chairperson, trustee (individual or entity who administers a trust) or their equivalents.
- j. Parent: Any entity including, but not limited to any individual, partnership, joint venture or corporation which owns (50) % or more of the voting stock of another entity.
- k. Principal Owner: An individual, partnership, joint venture or corporation that holds a ten (10) % or greater ownership interest in a submitting contractor or subcontractor.
- l. Share: To have space, staff, equipment, expenses, or use such items, in common with one or more other entities.
- m. Significant Adverse Information: includes but is not limited to an unsatisfactory final performance evaluation on a contract with any MTA agency within the immediate prior three (3) years, an uncured interim unsatisfactory rating on a contract with any MTA agency, or an answer of “yes” to any question in Part IV herein.

- n. Subcontract: An agreement between an individual or entity that is a party to a contract and another individual or entity which is for the provision of goods, services or construction pursuant to that contract, and has a value that when aggregated with the values of all other such agreements with the same individual or entity and subcontractor during the immediately preceding twelve (12) month period is valued at one million dollars (\$1,000,000) or more, and in special circumstances involving agreements of \$100,000 or more.
- o. Submitting Contractor: The entity submitting the Contractor Responsibility Form.
- p. Subsidiary: An entity in which the majority of the voting stock is owned by a parent.

PART I. IDENTITY OF CONTRACTOR:

- A. Contractor's full legal name: _____
- B. Tax ID Number ("TIN"), Employer Identification Number ("EIN") and Social Security Number ("SSN"), as applicable: _____
- C. Contractor's form of legal entity (corporation, joint venture, sole proprietorship, etc.): _____

If the Contractor is a Joint Venture, or Partnership, please list all partner firms and/or parties to the Joint Venture below. All partners and/or parties listed are also required to individually complete a separate Contractor Responsibility Form.

- (1) Partner/Party name: _____
TIN, EIN, or SSN: _____;
Percentage of Ownership: _____
- (2) Partner/Party Name: _____
TIN, EIN or SSN: _____
Percentage of ownership: _____

- D. State or country under whose laws Contractor is organized and year organized:

- E. Does the Contractor now use or, in the past ten (10) years has it used, TIN, EIN, doing business as or "DBA", name, trade name or abbreviation other than the Contractor's name or TIN, or EIN number listed in Part I.B. above?

- F. Contractor's mailing address: _____

- G. Contractor's street address (complete only if different than "F"): _____

- H. Has contractor changed its address in the past five (5) years and, if so, what was the firm's prior address(es)? _____
- I. Contractor's telephone number: _____ Fax number: _____
Email address: _____

PART II. IDENTITY OF PERSON COMPLETING THIS QUESTIONNAIRE:

- A. Name: _____
- B. Employer/Title: _____
- C. Telephone number: _____ Fax number: _____
- D. Email address: _____ Mobile number: _____

PART III. CONTRACTOR REPRESENTATIONS: If for any reason a representation on this questionnaire is not accurate and complete as of the time Contractor signs this form, Contractor must identify the provision and explain the reason in detail on a separate sheet. Absent such an explanation, Contractor represents that the following statements are complete and accurate:
Please check this box if a separate sheet is attached:

A. Statement of non-collusion as required by Section 2878 of the Public Authorities Law:

- (1) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
- a. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
 - c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- (2) A bid shall not be considered for award nor shall any award be made where (1) (a), (b), and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (1) (a), (b), and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the Chief

Procurement Officer of the Authority, or designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1(a) herein.

B. Statement of no-conflict of interest:

- (1) No appointed or elected official, member or other officer or employee of the City or State of New York, or of the Metropolitan Transportation Authority ("MTA"), or MTA's affiliates and subsidiaries: i) is interested, directly or indirectly, in any manner whatsoever in or in the performance of the Contract or in the supplies, work, or business to which it relates or in any portion of the profits thereof; or ii) has been or will be offered or given any tangible or intangible consideration in connection with this bid/proposal/Contract.
- (2) Contractor covenants that neither Contractor nor, to the best of Contractor's knowledge after diligent inquiry, any director, officer, owner or employee of Contractor or any person or entity with a 10% or more interest in Contractor has any interest nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the faithful performance of the Contract hereunder.
- (3) In the event Contractor has no prior knowledge of a conflict of interest as set forth in "1" and "2" above and hereafter acquires information which indicates that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the Authority's Chief Procurement Officer. Contractor shall thereafter cooperate with the Authority's review and investigation of such information, and comply with any instructions it receives from the Chief Procurement Officer in regard to remedying the situation.

C. The following questions apply to any bid, proposal, or contract between Contractor and the City or State of New York, any other state, any public authority or other public entity, the United States government, the MTA, and MTA affiliates and subsidiaries. (If the answer to any question is "YES," Contractor must provide all relevant information on a separate sheet annexed hereto). Please check this box if a separate sheet is attached:

The following questions apply to: i) Contractor, Contractor's parent, subsidiaries and affiliates of Contractor (if any); ii) any joint venture (including its individual members) and any other form of partnership (including its individual members) which includes Contractor or Contractor's parent, subsidiaries, or affiliates of Contractor, iii) Contractor's directors, officers, principals, managerial employees, and any person or entity with a 10% or more interest in Contractor; iv) any legal entity controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, managerial employee of Contractor, or by any person or entity with a 10% or more interest in Contractor.

(1) Within the past five (5) years, has Contractor been declared not responsible?	NO <input type="checkbox"/> YES <input type="checkbox"/>
(2) Has Contractor been debarred, suspended, or otherwise disqualified from bidding, proposing, or contracting?	NO <input type="checkbox"/> YES <input type="checkbox"/>
(3) Is there a proceeding pending relating to Contractor's responsibility, debarment, suspension, or qualification to receive a public contract?	NO <input type="checkbox"/> YES <input type="checkbox"/>
(4) Within the past five (5) years, has Contractor defaulted on a contract or been terminated for cause?	NO <input type="checkbox"/> YES <input type="checkbox"/>
(5) Has a government agency or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of the Contractor's default or in lieu of declaring Contractor in default?	NO <input type="checkbox"/> YES <input type="checkbox"/>

<p>(6) Within the past five (5) years, has the Contractor been required to engage the services of an Integrity Monitor in connection with the award of or in order to complete, any public or private contract?</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>(7) Within the past five (5) years, have Contractor's safety practices/procedures been evaluated and ruled as less than satisfactory by the City or State of New York, any other state, any public authority or any public entity, the United States government, the MTA, MTA affiliates or subsidiaries?</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>(8) Has Contractor's Workers Compensation Experience Rating been 1.2 or greater at any time in the last five (5) years? If "yes", please explain.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>

D. Consent to the jurisdiction of New York courts and to service of process:

- (1) If Contractor is not organized under the laws of the State of New York, Contractor consents to the jurisdiction of the Courts of the State of New York and to the jurisdiction of any federal court located within the City of New York, with respect to any matter pertaining to Contractor's bid/proposal and, if the Contract is awarded to Contractor, to the Contract.
- (2) Contractor agrees that service of process in any judicial or administrative action may be made upon it by certified mail, return receipt requested, sent to the mailing address for Contractor specified above.
- (3) Contractor agrees that any judicial or administrative action or proceeding commenced by Contractor against the Authority shall only be commenced in a state or federal court or agency located within the City of New York.

PART IV. QUESTIONS WHICH MUST BE ANSWERED BY "YES" or "NO": (In the event of a "YES," Contractor must provide all relevant information on a separate sheet annexed hereto, and the Authority reserves the right to inquire further with respect thereto.)

To the best of your knowledge after diligent inquiry, in connection with the business of Contractor or any other firm which is related to Contractor by any degree of common ownership, control, or otherwise, do any of the following statements apply to: i) Contractor, Contractor's parent, subsidiaries and affiliates of Contractor (if any); ii) any joint venture (including its individual members) and any other form of partnership (including its individual members) which includes Contractor or Contractor's parent, subsidiaries, or affiliates of Contractor; iii) Contractor's directors, officers, principals, managerial employees, and any person or entity with a 10% or more interest in Contractor; iv) any legal entity controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, managerial employee of Contractor, or by any person or entity with a 10% or more interest in Contractor.

<p>A. Within the past ten (10) years, has been convicted of or pleaded nolo contendere to (1) any felony or (2) a misdemeanor related to truthfulness in connection with business conduct.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>B. Has pending before any state or federal grand jury or court an indictment or information of the commission of a crime which has not been favorably terminated.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>C. Is the subject of a pending investigation by any grand jury, commission, committee or other entity or agency or authority of any local, state, or the federal government in connection with the commission or alleged commission of a crime.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>D. Is currently disqualified from selling or submitting bids/proposals to or receiving awards from or entering into any contract with any federal, state or local government agency, any public authority or any other public entity.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>

<p>E. Within the past five (5) years, has refused to testify or to answer any question concerning a bid or contract with any federal, state, or local government agency, any public authority or any other public entity when called before a grand jury or other committee, agency or forum which is empowered to compel the attendance of witnesses and examine them under oath, upon being advised that neither the person's statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>F. Is currently disqualified from selling or submitting a bid to, or receiving an award from, or entering into any contract with any public entity or public authority within the State of New York because, within the past five (5) years, such entity or person refused to testify or to answer any relevant question concerning a transaction or contract with the State of New York, any political subdivision of the State of New York, or a public authority or a public department, agency or official of the State of New York or of a political subdivision of the State of New York, when called before a grand jury or other state or local department, commission or agency which is empowered to compel the attendance of witnesses and examine them under oath, upon being advised that neither that person's statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>G. Has within a ten (10) year period preceding this Bid/Proposal been convicted of or had a civil judgment rendered against it for or in relation to: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; (ii) collusion with another person or entity in connection with the submission of bid/proposals; (iii) violation of federal or state antitrust statutes or False Claims Acts; or (iv) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement(s) or receiving stolen property.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>

PART V. ADDITIONAL QUESTIONS: In the event of a "Yes", Contractor must provide all relevant information on a separate sheet annexed hereto, and the Authority reserves the right to inquire further with respect thereto.

A. List the name, title, and home and business address of each person or legal entity which has a 10% or more ownership or control interest in Contractor:

Name: _____

Title: _____

Home address: _____

Business address: _____

B. List the name, title, and home and business address of each director and principal officer of Contractor:

Name: _____

Title: _____

Home address: _____

Business address: _____

C. In the past ten (10) years, has Contractor entered into a consent decree, deferred prosecution agreement, or a non-prosecution agreement?

NO YES

D. In the past three (3) years, has Contractor been a subcontractor on any contract with the Authority?

NO YES

E. In the past seven (7) years, have any bankruptcy proceedings been initiated by or against the Contractor (whether or not closed) or is any bankruptcy proceeding pending by or against the Contractor regardless of the date of filing?

NO YES

<p>F. In the past five (5) years, have there been any judgments, injunctions, or liens of \$100,000 or more, including but not limited to, judgments based on taxes owed, fines and penalties assessed by a government agency against Contractor at any time?</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>G. Are there any judgments, injunctions, or liens for \$100,000 or more each against Contractor that remain open, unsatisfied or in effect today?</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>H. During the past five (5) years, has the Contractor failed to file any applicable federal, state or local tax return?</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>I. Does the Contractor own or rent office space? Please provide details.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>J. Does any principal owner or officer of the Contractor, or any member of his/her immediate family, have an ownership interest in any entity that holds the title or lease to any real property used by the Contractor?</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>
<p>K. Does Contractor share office space, staff, equipment, or expenses with any other entities? If "YES", please provide details.</p>	<p>NO <input type="checkbox"/> YES <input type="checkbox"/></p>

L. Contractor is required to provide a list of contracts as requested in (1) and (2) below. For each of the contracts listed in (1) and (2) below, Contractor shall provide a brief description of the work performed, the contract number, the dollar amount at award and at completion, date completed, and the name and telephone number of the owner's representative:

(1) List all contracts completed during the last three (3) years. If more than three (3) contracts have been completed in the past three (3) years, list the last three (3) contracts completed.

a. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number of company and owner's representative:

Dollar amount at completion: _____

b. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number of company and owner's representative:

Dollar amount at completion: _____

c. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number of company and owner's representative:

Dollar amount at completion: _____

(2) List each contract completed by Contractor during the last three (3) years for which liquidated damages or penalty provisions were assessed against Contractor for failure to complete the work on time or for any other reason. Contractor is required to provide an explanation of the circumstances for each contract.

a. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number of company and owner's representative:

Dollar amount at completion: _____

b. Brief description of work performed: _____

Contract number: _____
Dollar amount of award: _____
Date completed: _____
Name/Telephone number of company and owner's representative:

Dollar amount at completion: _____

c. Brief description of work performed: _____

Contract number: _____
Dollar amount of award: _____
Date completed: _____
Name/Telephone number of company and owner's representative:

Dollar amount at completion: _____

If none of the above situations occurred during the last three (3) years, state "NONE" here: _____

M. Furnish the following information for each contract for which, during the last three (3) years, the Contractor was:

- (1) Terminated for default; or
- (2) Sued to compel performance; or
- (3) Sued to recover damages, including, without limitation, upon an alleged breach of contract, misfeasance, error or omission or other alleged failure on Contractor's part to perform as required by the contract; or
- (4) Called upon a surety to perform the work; or
- (5) Required to engage the services of an Integrity Monitor in connection with the award of or in order to complete, any public or private contract; or
- (6) Required to draw on a letter of credit in lieu of a performance bond.

a. Brief description of work performed: _____

Contract number: _____
Dollar amount of award: _____
Date completed: _____
Name/Telephone number of owner's representative: _____

If none of the above situations occurred during the last three (3) years, state "NONE" here: _____

N. List all Contractor employees: (Attach additional sheets as needed)

(1) Who are currently employees of MTA or any MTA subsidiary or affiliate:

Name: _____

Currently employed by: (check as appropriate)

MTA NYCT MaBSTOA SIRTOA MNCR

LIRR MSBA TBTA MTACC MTA BC

Name: _____

Currently employed by:

MTA NYCT MaBSTOA SIRTOA MNCR

LIRR MSBA TBTA MTACC MTA BC

Name: _____

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(2) Who within the past two (2) years have been MTA or any MTA subsidiary or affiliate employees who were involved on behalf of Contractor with the preparation of this bid/proposal or would be involved in the performance of the contract if it is awarded to Contractor.

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O. Provide certified financial statements for Contractor's last three (3) fiscal years. If Contractor does not have certified financial statements, provide financial statements sworn to by Contractor's chief financial officer. If Contractor is unable to provide any such statements, provide other information which will enable the Authority to evaluate and determine whether Contractor has sufficient financial resources to enable Contractor to perform the Contract.

P. Does Contractor have a subsidiary or affiliate? NO YES

Q. Is Contractor a subsidiary of another entity? NO YES

R. Within the past five (5) years or currently, does Contractor, any director, officer, principal, managerial employee of Contractor, or any person or entity with a 10% or more interest in Contractor have an interest of 10% or more in any other firm or legal entity? NO YES

S. If the answer to P, Q or R is "YES," would Contractor's answers pertaining to Part V Questions A through M above be the same for each such parent, subsidiary, affiliate, firm or legal entity? If not, please provide a full explanation on a separate sheet of paper. NO YES

<p>T. Describe the resources, including but not limited to, staffing, facilities, equipment, and tools that Contractor will commit to the performance of this contract. If this information is provided elsewhere in Contractor's bid/proposal, please enter below the reference to that section in Contractor's submission that responds to this question.</p> <p>See Section: _____</p>	
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Contractor must sign here: _____
Authorized Signature

Date: _____

